

MONITORING TRAFFICKING IN PERSONS AND HUMAN RIGHTS IN PERU



University of Oslo

Faculty of Law

Luis N. Vasquez Cordero
Supervisor: Marjan Ajevski
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"Any law too often subject to infraction is bad; it is the duty of the legislator to repeal or to change it, lest the contempt into which that rash ruling has fallen should extend to other, more just legislation"

Marguerite Yourcenar, "Memoirs of Hadrian"

1. Introduction

The last two decades have witnessed an increasing interest in criminal activities which seem to come from bygone eras to our present to remind us once more of the old Hobbesian dictum “Homo homini lupus” (Man is man’s worst enemy). The new information technology and increasing transportation facilities, along with the never ending demand for cheap labor in a globalized market, have created a profitable area for organized criminals. Economical hardship, inequality, growing unemployment and the old human instinct of leaving one’s birthplace to make a better life in a wealthier environment have also given rise to a phenomenon of modern slavery: trafficking in human beings for the purpose of exploitation.

Trafficking in persons is one of the fastest growing illegal activities in the world today.¹ Certainly, organized criminals have recognized the opportunities for business and moved in. This situation has created the necessity among the international community to create normative definitions in order to address this crime.

In 2000, during the United Nations Convention against Transnational Organized Crime held in Palermo, Italy, the much needed definitions were definitively formalized in the form of two supplementing protocols. The first of these protocols, the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children (hereafter the Palermo Protocol) was the first legally binding international instrument regarding human trafficking in over half a century. More than ten years later, it is time to evaluate the level of compromise of the states parties and how this has been monitored over the years in order to comply with the main goals of the protocol.

1.1 The research question

At this point, I would like to point out that unlike other Human Rights conventions, such as the International Covenant on Civil and Political Rights (ICCPR), the Palermo Protocol does not have an individual complaints mechanism, which renders

¹ Joy Ngozi Ezeilo, the UN Special Rapporteur on Trafficking in Persons, especially women and children, in <http://www.un.org/apps/news/story.asp?NewsID=34893>; Naim (2006) p.116; Shelley (2010) p.2

individuals unable to complain to any United Nations organ in the face of violations of the provisions contained in the Protocol.

In this context, the adjudicatory bodies regarding violations of human right related to trafficking are exclusively located at the regional and local level. In a number of cases, such as in the European Court of Human Rights and in national tribunals as the Peruvian, the state's negative and positive obligations towards victims of human trafficking have been addressed through the judicial application of the norms established by the Protocol and local legislation.

Therefore the main objective of this thesis will be answering the following research questions: What are the obligations of the states under the Palermo Protocol and other Human Right Law? How effective has the monitoring process for the implementation of the Palermo Protocol been in the case of Peru? Are there better forms of monitoring the states parties (with focus on Peru) in order to comply with their human rights obligations regarding the protocol?

1.2 Hypotheses

As it has happened with many UN legal instruments, especially those regarding human rights issues, most of the members rapidly sign the respective document. The Palermo Protocol has not been the exception as it entered into force on December 25, 2003. Up to date, this protocol has been signed by more than 147 states.² The Palermo Protocol obligate member states to introduce a wide set of legal provisions against trafficking. Therefore, most states have enacted anti-trafficking legislation along the 2000s.

In this context, the Palermo Protocol is meant to provide consistency and consensus around the world on the phenomenon of trafficking in persons. It specifically requires that the conduct described in Article 3 be criminalized in domestic legislation. The internal legislation of state parties does not need to follow the language formula of

² <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html?ref=menuaside>

the Trafficking in Persons Protocol strictly, but should be adapted in accordance with domestic legal systems to give effect to the concepts contained in the Protocol.³

From my own professional experience working with human trafficking in Peru, first as part of the Peruvian Ministry of Interior and later from the NGO's work perspective, I can claim that the compliance with the protocols goals at the national level must be assessed under the light of the state intrinsic problems on one side and its response against human trafficking on the other.

My hypothesis is that research on how the Peruvian authorities fulfill their duties according to the Palermo protocol, especially while combating the traffickers and assuring the victims the necessary protection and assistance, will show that there is a lack of compliance in different aspects which are not necessarily addressed at the national or international level. My postulate is that besides the creation of much necessary individual complaint's mechanisms at the global and regional levels as subsidiary adjudicating efforts toward the implementation of the Palermo Protocol, it is necessary to create a strong local and independent monitoring body in order to step up the protection of the human rights of the victims of trafficking.

1.3 Sources, theories and methodology

I have decided to use two approaches in my research in order to first verify if the legal framework outlined by the Palermo Protocol matches with the common practices of the state parties (i.e. Peru). Secondly, I will try to identify the methods used, if any, to monitor the compliance between the state practices and the protocol's main goals, specifically in relation to the protection of the victim's human rights.

The first part of my thesis will be based on information collected from written materials, including academic studies, books and articles. The research on which this part of my thesis is based is thus theoretical in nature. It seeks to identify the outline of the proposed research questions and describes their background. The theoretical part of my thesis will also present a general legal scope against trafficking

³ Ibid.

established by international human rights law instruments and in specific by Peruvian law.

In the second part of my thesis I will use a qualitative research method in order to find additional information and possible clarification from different relevant actors involved in combating trafficking in Peru. In order to perform the second approach I will use semi – structured interview as a method, as I consider it a very flexible tool which has the capacity to provide insight into how the participants view their own work against trafficking, the perceived problems and needs. I have chosen my empiric sample from a strategic point of view aimed at getting hold of the actors with the most relevant knowledge and experience. My sample will be formed by police officers with anti-trafficking background, Peruvian officials working in the Ministry of Interior and personnel from nongovernmental organizations with relevant experience in assisting victims of trafficking and other human trafficking issues.

With reference to the concept of trafficking in human beings, I will use the international legal instruments as the Palermo Protocol and the European Convention on Action against Trafficking in Human Beings. In addition I will address to Peruvian legislation on how the concepts are defined in the Peruvian context. Further, it is also necessary to distinguish the concept of human trafficking from the concept of human smuggling, and to do this I will follow the work of Leslie Holmes (Holmes 2010) which set up six ways to distinguish human trafficking from human smuggling. Furthermore it will be necessary to discuss how trafficking in persons aimed at exploitation is closely linked to other illegal actions such as illegal work, child labor, procurement (pimping) and so on.

Most of the literature on trafficking in human beings is dedicated on outlining the basic features of human trafficking as a form of organized and transnational crime. Examples of such studies are “The International Law of Human Trafficking” (Gallagher 2010) and “Human Trafficking: A Global perspective” (Shelley 2010). Some studies have addressed the problem of human trafficking and human rights, such as “Trafficking and Human Rights – European and Asia Pacific Perspectives” (Holmes 2010), but none of these books address the issue of how the Palermo Protocol is implemented and how the monitoring mechanisms actually work.

Regarding the monitoring issue I will use two books which are aimed at human rights practitioners working with monitoring. First a very interesting manual called “Manual on Human Rights Monitoring” edited by the Norwegian Institute of Human rights and secondly a book written by two leading scholars on the field which main topic is measuring human rights.

1.4 Structure of the thesis

The thesis will be organized into an introduction plus five chapters. The number of chapters is related to a scheme consisting of an introduction, a presentation of the problem background, a discussion of theoretical issues, analysis of empirical field work findings and a conclusion.

In the first chapter I will present the introduction of my thesis. It includes a presentation of the theme and my research question with the justification for my research question in the form of an explanation of the relevant background of the study. Additionally, it presents the methodological framework and its shortcomings in order to outline how I will answer the proposed research question.

Later, in the second chapter, I will present a theoretical framework for the modern concept of human trafficking. At the same time, I will also address theoretical issues in relation to measuring human rights and monitoring mechanisms.

The third chapter will comprise the description of the anti-trafficking legal framework. The above mentioned international instruments may be considered as the normative standard in this chapter. This chapter will also include a general theoretical discussion aimed to show the advances in the implementation of the legal framework at regional and local level.

The human trafficking situation in Peru and the main efforts from the government to combat it will be addressed in the fourth chapter. In a general basis, I will present the situational background in which the Peruvian state is called to fulfill its international obligations.

Chapter five will deal with the findings of the field work, especially focused on the implementation of protection for the victims' rights under the scope of the interviewed

actors. In addition, I will present a discussion comparing the main outcomes delivered in the precedent chapters. My aim is to confirm or discard the monitoring methods used up to date and eventually propose a possible need for a new monitoring mechanism that may be able to protect human rights violations related to trafficking cases.

Finally, in the last chapter I will present the conclusions of my thesis. I expect to be able to present a solid case in order to support the necessity of a strong local and independent monitoring body coupled with a mechanism allowing individual complaints for the victims of trafficking at the regional level.

2. Theoretical perspectives

Human Trafficking in its diverse forms (slavery, forced labor, servitude, etc) is as old as human civilization and like every human activity those ancient forms of human trafficking received attention from lawmakers. The Babylonian Hammurabi Code and some Roman laws, just to mention some examples within a universal pattern, regulated an activity that at that time was considered perfectly legal. The world and the victims of that infamous commerce had to wait until 1807 to see the first legal prohibition against slavery enacted by a state.⁴ That year initiated the long and unfinished legal battle against the exploitation of a human being by another.

2.1 Central theories about human trafficking

Although legal slavery might have already disappeared from the world today, there is a wide consensus that new forms of criminal activity have taken its place in what is now called “the slavery of our times”.⁵ However, in spite of its gravity and serious consequences for the basic human rights of the victims, it took quite a long time for the international community to arrive to a consensual definition on the modern concept of trafficking in persons.

This process has not been easy since during the last decades, a steady growth in supply and demand have created an extremely profitable business for human traffickers. Thus, new factors and players have become relevant into an old but profitable business.

According to Louise Shelley, transnational criminals have been major beneficiaries of the effects of globalization: enormous migration flows, increasing economic and demographic disparities between poor and rich countries, greater availability for travelling, cheaper transportation costs, and tremendous growth of tourism. In sum, during the last decades, world changing conditions created increasing supply and demand, and increased possibilities for new markets where they can meet. Today,

⁴ The approval of the Act to abolish the Slave Trade in the British colonies took place in March 1807.

⁵ Holmes (2010) p.1; Shelley (2010) p.1 ; Roth (2010) p.1

there is a global economy in which consumers avidly seek cheap goods and services, from easily available exploited labour to accessible sexual services.⁶

Although transnational organized crime has promptly grasped and used this new world of possibilities for making enormous profits, it is important to outline that small-scale entrepreneurship characterizes much of human trafficking.⁷ This is especially true when confronting intra-national trafficking cases. From a business perspective, human trafficking has low start-up costs, minimal risks, large demand and high profits that go to individual criminals “making this trade more attractive for all involved”.⁸

Perhaps unsurprisingly then, is the international community’s feeling of the necessity for a more intensive engagement. The wheel was set into motion by NGO’s and other international bodies. First, it was necessary to discuss a new definition that accounted the new features of the human trafficking problem. The most accepted definition on human trafficking arrived in 2000, due to the wide consensus achieved by the correspondent international instrument, namely that provided in Article 3 of one of the so-called Palermo Protocols of the United Nations. This will be quoted in full in chapter 3.

Literature on human trafficking has for a long time been devoted to define the legal difference between human trafficking and people smuggling. At this point, I will use the different features between people smuggling and trafficking in persons in order to stress some of the most important characteristic of this phenomenon. According to Leslie Holmes, human trafficking can be distinguished from people smuggling in six different ways.⁹

First, human smuggling necessarily requires the crossing of an international border whereas not all cases of trafficking do so. Many cases of trafficking do involve a transnational element but in some countries, like Peru, the internal trafficking

⁶ Shelley (2010) p.3

⁷ Ibid.

⁸ Ibid.

⁹ Holmes (2010) p.2

accounts for most of the cases by far.¹⁰ Thus it is important not to focus only in the transnational sphere in order to have a more accurate picture of the situation.

Second, all border crossing related to a smuggling case is by definition illegal whereas many trafficked victims have crossed state frontiers on a legal basis. However, in the case of vulnerable people a potential risk may develop in a trafficking in person's case once they arrive to their destination.¹¹

Third, regarding the relation between the two principal actors, the smuggler and the smugglee, smuggling people involves neither coercion nor deception. Smugglers give a service, the illegal entering to a destination country, to someone who is seeking their assistance and willing to pay for it. In other words, there is a product, illegal migration, which is sold between persons who are fully aware of the terms of the deal. Thus, people smuggling is an economic transaction, but an illegal one, between essentially equal but different parties. The person being smuggled is free to seek, negotiate or finish the agreement which means that no coercion is involved. On the other hand, victims of human trafficking are not free to finish the "business" once it has been established. The coercion necessary to retain the victims involves different degrees of physical or psychological violence, often in the form of threats of physical violence against the victims or their families. Traffickers may also threat the victims to report them to the police or migration authorities or, especially in sexual exploitation cases, to shame women by informing the families about their activities. In many cases, actual physical violence is present even in its most extreme forms such as starvation, beatings, rape, torture and even murder.¹²

Fourth, traffickers also use deception. Obviously, traffickers do not explain in advance the harsh and exploitative living conditions that the victims will suffer once they are under their sphere of power.¹³ They promise extremely favourable working conditions to persons who are in a vulnerable situation due to poverty or other personal reasons. Traffickers lure their victims with simple lies, or in occasions quite

¹⁰ According to Peruvian official records dating from to 2004, internal human trafficking cases amount to not more than 10% of the total (RETA System). Moreover, although they recognize that it certainly exists none of my interviewed sources considered international trafficking as an important part of the problem in terms of number of cases and victims.

¹¹ Holmes (2010) p.2

¹² Ibid.

¹³ Ibid. p.3

elaborate schemes, that invariable contain the promise of a better life in the future.¹⁴ Trafficking also involves deprivation of identity papers and of family contact. In doing so, the main goal is to isolate the victim from any possible source of aid, rendering escape attempts risky and much more difficult.¹⁵

Fifth, traffickers develop a continual coercive relationship with their victims. In general, people smugglers receive the payment for the service well in advance, therefore the link with their “costumers” stops the moment the agreed service is performed (illegal border crossing). Traffickers on the other hand, follow the logic of maximizing benefits, so, it is in their own “commercial” interest that somehow they must create and maintain a link that will enable to extract the maximum economical profit from each victim.¹⁶ Grimly, at some point when the victims can give no more benefits or when he or she proved too hard to control, it is time to discard them as they are no longer seen as valuable assets. Unfortunately this may lead to the commission of even more gruesome crimes.

As a last point, Holmes claims that “the attitudes of smugglees towards smugglers are often markedly different from that of trafficked persons towards their traffickers” as in the first case both parties see themselves within the framework of a commercial deal.¹⁷ On the other hand, she claims that traffickers cannot expect to be sufficiently deceptive as to enjoy such a positive image. However, I do not completely agree with the last part of her argument since there are many reports of trafficked victims who assume a passive or even active defence of the criminals who exploited them once they are freed. If the victim behaves this way toward his or her exploiters out of fear to them or to the authorities, or because they forged an extremely dependant relationship with their captors is a hotly debated topic.¹⁸

¹⁴ A case referred to me by a Peruvian police officer during an informal conversation reflects how far the traffickers are eager to go in order to achieve their goals. In 2004, two criminals used an alleged invitation to participate in an inexistent international beauty contest in order to lure a young Peruvian pageant model into an African country where she was to be sold to high ranking officers. The 22 year-old woman travelled to that country but managed to escape barely and return to Peru unharmed.

¹⁵ Holmes (2010) p.3

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ In example, during my interview with Col. Tello, he mentioned that especially in the case of female teenagers runaways is hard to get further information about the people who sexually exploited them. In general, they feel gratitude towards them arguing that “he was helping me giving me a place to live”.

Finally, while it is impossible to determinate the precise scale of trafficking in its diverse forms, it is undeniable that one of the most important reasons that trafficking in persons matter is because of its ethical and human right implications.¹⁹ The most important difference between people smuggling and human trafficking is that while people smuggling is a crime against a states authority, human trafficking represents a crime against a person's integrity and basic human rights. Human trafficking is a direct aggression to a wide set of basic human rights. Several of the 30 articles comprising the UN Universal Declaration of Human Rights are directly related to human trafficking, notably Article 3 (Right to life, liberty and security), Article 4 (Prohibition of slavery or servitude), Article 23 (Right to adequate work conditions) and arguably Article 13 (Right to freedom of movement and residence).²⁰ Moreover, given the significant effects posed by human trafficking in the lives of millions, the international community must keep in mind that probably there have never been as many slaves as today.²¹

2.2 Central theories about monitoring human rights issues

Monitoring is the first step in order to identify and later find solutions to any problems that may arise during the implementation of a human rights treaty. The main purpose of monitoring is to achieve an improvement in the human rights situation of the country in question.

There are three main elements of human rights monitoring: information gathering, verification of the gathered information and then application of the information. The specific way in which these elements will be carried out during a certain process will depend on the situation in the country or region at the time.²²

Human rights treaties are implemented domestically. Such treaties follow the premise that they will have some effect in countries' practices. This idea is also the foundation stone lying at the core of international law.²³

¹⁹ Holmes (2010) p.4

²⁰ Ibid. p.11

²¹ Naim (2006) p.134-135

²² Norwegian Institute of Human Rights (2001) Chapter 6. p.1

²³ Hathaway (2003) p.312

However, political elites have arrived to the conclusion that “in the area of human rights, countries have little to gain and much to lose from enforcing treaties against each other”.²⁴ Certainly, human rights treaties constrain states’ sovereignty and freedom of action in a wide set of internal affairs but they must be respected as their obligations are legally binding and, at least in theory, voluntarily undertaken.

Then, one may ask why there is an ongoing push to create and extent human rights treaties and which are the effects of human right treaties on the legislation of the countries that ratify them. This question is even more urgent since “strikingly little is known about their true effectiveness in achieving their central goals”.²⁵

In spite of this lack of knowledge about their true effectiveness, some scholars consider that “once made, formal commitments to treaties can have noticeably positive consequences” since they regard “international law as the best alternative to influence official state practices regarding human rights”.²⁶ Moreover, authors like Landman and Carvalho claim that “human rights standards have been the unique contribution made by international law to the discourse on human rights”.²⁷

Clearly, treaties reflect politics but, it is important to identify the motives that make a government commit itself to an international legal agreement that may curtail its freedom. The motive for the ratification of a certain treaty may range from a strong value commitment to the fact that nearly all governments want “to avoid the social and political pressures of remaining aloof from a multilateral agreement to which most of their peers have already committed themselves”.²⁸

Formal commitment may have deceiving and even pervasive effects. For example, if a certain human rights treaty is poorly monitored and enforced; countries would face little or no punishment for failure to match rhetoric with action. Meanwhile, states that ratify human rights treaties would face less urgency to improve their human rights practices. Thus, treaties might allow some governments to, “intentionally or

²⁴ Ibid. p.312-313

²⁵ Ibid. p.313

²⁶ Simmons (2009) p.4

²⁷ Landman & Carvalho (2010) p.16

²⁸ Simmons (2009) p.12-13

unintentionally, substitute words for deeds”, and thereby slowing instead of hastening much needed improvements in human rights conditions.²⁹

The answer to the commitment question must reflect the fundamental decisions each state faces about whether to ratify voluntarily a human rights treaty. The ideal answer is that governments ratify treaties largely because they believe that they can and should comply with them. In practice, it has been demonstrated that there is not always a perfect match between ratification and compliance.³⁰

In this context, it is clear that treaties by themselves do not guarantee better rights but they may contribute to create a space in which these rights are more likely to be respected. Domestically legal arrangements have an important role to play in creating an atmosphere in which human rights are increasingly respected.³¹

Above the national level, treaties also play a crucial constraining role. They constrain governments because when they fail to comply with their provisions, it is possible to define more clearly what Simmons calls the “expectations gap”³². The expectation gap is the difference between what one state claims that it is doing and what is actually done. This situation opens the possibility for monitoring efforts in the internal politics using domestic mechanisms.³³

2.2.1 Domestic mechanisms

There are three domestic mechanisms that a treaty may have the ability to produce: create elite-initiated agendas, support litigation, and spark political mobilization.³⁴ All these mechanisms are not exclusive and may coexist in time over one specific claim. Quite often a human right treaty introduces issues into national politics that would not have been introduced without the action of international politics. Thus, *governing*

²⁹ Hathaway (2002) p.315

³⁰ Simmons (2009) p.12

³¹ Ibid.

³² Ibid. p.14

³³ Ibid.

³⁴ Ibid. p.14-15

elites can include it in their political agendas and initiate compliance, sometimes with practically no public participation.³⁵

Most of human right treaties also provide a resource in *litigation* if one government shows to be less than eager to comply. The ad-hoc mechanisms can also raise the political costs of government resistance by legitimating through internal legal institutions the demand to comply.³⁶

Finally, treaties also provide political, legal, and social resources to individuals and groups whose goal is to hold governments responsible to their promises through *political mobilization*. During decades, NGOs have used those resources to advance the human rights' cause worldwide regarding a wide range of violations. The battle for the rights of the victims of trafficking, although relatively new, has not been an exception. To sum up, in spite of some evident shortcomings there are few arguments for abandoning the human rights treaty system but instead there are many suggested ways in which it can be strengthened or complemented to better achieve its goals.

2.2.2 International mechanisms

Many human rights treaty bodies have the mandate to deal with individual complaints, on the basis of an optional protocol.³⁷ Some experts consider the creation of such individual complaint procedures at the international level as the final step of the monitoring of the implementation of Human Rights.³⁸

The *international complaint procedures* established by some treaties are “a necessary component of a strategy aiming at the effective implementation of victim's rights”.³⁹ Undoubtedly, all persons must have the possibility to present a complaint at the international level when a violation of their basic rights occurs and the national

³⁵ Ibid.

³⁶ Ibid.

³⁷ All the 9 nine core Human Rights treaties have now an individual complaint procedure.

³⁸ Doek (2002) p.1

³⁹ Ibid.

remedies are not effective or even inexistent. However, this possibility must be as efficient and effective as possible.⁴⁰

Along the years, many shortcomings have surfaced regarding this approach. Authors like J.E. Doek have questioned the effectiveness of the traditional complaints procedure implemented within the framework of some of the treaties.⁴¹

One of the most dramatic situations is the backlog existing in individual complaints procedures. In example, in 2002 it took the Human Rights Committee 2 ½ years to decide that a case was not admissible and 4 years from the date of submission of the complaint to arrive to a final decision. In the case of the Committee against Torture the decision both for inadmissibility and final decision may wait 2 years from the date of submission.⁴² Similar figures can be found in regional complaints systems like the European Court of Human Rights and the Inter-American Court of Human Rights.

Treaty based mechanisms are established in order to implement the protection of human rights by holding State Parties accountable in relation with their international commitments. However, it is important to outline that none of the permanent United Nations treaties or internal bodies have legal competence to order compensation or other remedies in any case of human rights violations.⁴³

In general, when those treaty bodies accept individual communications they express their views to the state concerned if a complaint filed involves a violation of a right protected by the corresponding treaty. Lately, these decisions on individual complaints increasingly require from the state to give restitution, pay compensation, or afford other remedies.⁴⁴

In this context, it may be said that the ultimate enforcement power of such mechanisms resides above all in the public embarrassment of the state targeted by a

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Ibid. p.1

⁴³ Shelton (2005) p.3

⁴⁴ Ibid.

certain committee.⁴⁵ The country's international image may be at the stake if it does not show that it wants to fulfil the word given.

Therefore, Oona Hathaway considers that a central aspect to release the entire potential of the international human rights treaty system is increasing global information about countries' human rights practices. She claims that the reason that some countries can use human rights treaties to offset pressure for improvements in their practices is not only because the treaties do not include strong enforcement mechanisms, mechanisms that most likely would be underutilized if they did exist. Instead, they are able to ignore their commitments because, without any proper monitoring mechanism, "they can expect that little information about their actions and flaws will be available to the world community".⁴⁶

Coming from a different approach, the *reporting procedures* have also an important role in the supervision of domestic implementation of human rights treaties' obligations. Moreover the treaty bodies, besides the individual complaint procedure, dedicate large amounts of their time and attention to the examination of submitted reports. The reporting mechanism can be performed in different ways depending on what is being reported or who is reporting.

First, there is a *thematic procedure* developed by the United Nations to address specific human rights problems on a global basis. The first thematic procedure was established in 1980 and currently there are 35 mandates of this type, including one Special Rapporteur on Trafficking in Persons, especially women and children.

Each special rapporteur or working group has its own mandate conferred by the Human Rights Council for a renewable term of three years and depends on Office of the High Commissioner of Human Rights. The approaches, working methods and topics of the various individuals and groups have tended to expand and converge over time.⁴⁷ In general, the special rapporteurs or the working groups seek

⁴⁵ Norwegian Institute of Human Rights (2001) Chapter 2

⁴⁶ Hathaway (2002) p.316

⁴⁷ It is possible to identify at least four others Special Rapporteurs whose mandates may address trafficking in persons related topics: the Special Rapporteur on the sale of children, child prostitution and child pornography, the Special Rapporteur on violence against women, its causes and

information from governmental sources on cases and policies, propose urgent action, make country visits, and then report to the Council and through it to the UN General Assembly.⁴⁸

In addition, it is important to remark that some *regional treaty bodies* like the Council of Europe have created a specific working group to address human trafficking issues. This group of experts regularly publishes reports about the measures taken by the states parties in order to fulfil their commitments in the combat of trafficking in persons.⁴⁹

On the other hand, it is possible to identify another monitoring approach in the form of the annual Trafficking in Persons Report of the U.S Department of State⁵⁰. This report can be seen as some sort of an *inter – pares* form of monitoring as, at least in theory, it only has internal purposes concerning national legislation requirements. But, I consider it as a category that I will call “*diplomatic monitoring*”.

As I will demonstrate later, the US TIP report has had a profound effect on the way that a specific country, Peru, has implemented the Palermo Protocol during the last decade. Using diplomatic tools such offering advantages of foreseeing problems during the negotiation of a Free Trade Agreement at that time, the U.S government advance the cause of the combat against trafficking in persons within the Peruvian state and in favour of all its citizens.

2.2.3 Ideal mechanisms?

From a local perspective, some authors consider that in order to implement an effective monitoring system the international community must start with promoting the establishment of effective monitoring bodies at the national level. Thus, “the international complaint procedures must remain as a kind of last resort in an otherwise well developed national monitoring system”.⁵¹

consequences, the Special Rapporteur on the human rights of migrants and the Special Rapporteur on contemporary forms of slavery.

⁴⁸ Shelton (2005) p.121

⁴⁹ http://www.coe.int/t/dghl/monitoring/trafficking/docs/monitoring/greta_EN.asp

⁵⁰ The report is internationally known by the name “US TIP report”

⁵¹ Doek (2002) p.1

An effective national monitoring system must reunite some of the following characteristics. *First*, it must be clearly understood that the national government is the direct responsible for the implementation of the treaty. Therefore, the monitoring body can be placed as a unit within an existing National Human Rights Institution. Although, it is of the foremost importance that the monitoring body must be independent from the government.⁵² In the present case, as an interesting option when it comes to national monitoring of the authorities' actions against trafficking in persons, the State may introduce the figure of the Ombudsman or a commissioner for trafficking in persons issues. A number of European states have established independent national rapporteur functions with a mandate to monitor the state's action against trafficking in persons.⁵³

Secondly, the monitoring body must be created by law with clear provisions setting out its specific functions and secure a mandate as broad as possible. The body or institution in charge must be able to receive and deal with every individual or collective complaint, initiate investigation at its own initiative, make public opinions, recommendations, proposals and periodic reports on its own initiative or at the request of authorities and NGO's on any matter concerning the topic in question. In addition, complaints should not be considered inadmissible solely on the ground that the victims have not exhausted other possible remedies (i.e. civil, penal or administrative procedures).⁵⁴

Thirdly, the monitoring body should establish victim-oriented procedures. The staff must be adequately trained in interviewing and respecting the privacy and other basic rights of the victim and his or her family.⁵⁵

Last but not least, within a monitoring system it is important to consider that many NGO's are already working for different causes like combating trafficking in persons. In most cases they are independent from the government and perform their own

⁵² Doek (2002) p.3

⁵³ Netherlands <http://english.bnrm.nl/> and Finland (In the finish case, the Ombudsman for minorities is at the same time the National Rapporteur for Human Trafficking) <http://www.vahemmistovaltuutettu.fi/intermin/vvt/home.nsf/pages/2CD2B8C5ACF7104FC22576C50035C62F> are two examples.

⁵⁴ Doek (2002) p.3

⁵⁵ Ibid.

monitoring activities making reports from a civil society perspective. Certainly, they will have a very important role in the gathering and verification of all the available information.

In the case of the Palermo Protocol it may be time to re-examine the current reliance on a mixed mechanism of “diplomatic monitoring” and self-policing that will be explained in detail in the following chapters of this thesis. At this point it is interesting to analyze whether a possible approach would be to introduce a stronger system of independent expert monitoring, maybe using an already existing monitoring institution, which would be more likely to expose the Peruvian governments' failures to comply with their treaty commitments. One certain thing is that human rights activists must remain vigilant regarding ratification of treaties like the Palermo Protocol as a promising beginning in an ever evolving campaign.

2.3 Central theories about measuring human rights

Monitoring human rights is a complex task. First, in the present topic it is necessary to know what is trafficking and if there have been cases that fall within the common agreed definition. Then, the concept's constitutive elements are further divided into different sets of indicators which must represent a tangible measure of an otherwise abstract concept. In addition, the indicators used to measure the different concepts involved must be aimed at the overall goal of monitoring: improving the human rights situation of the people.

Human rights have a content which is defined through international law by the creation and adoption of legal standards by states. These standards are established by treaties which are international legal binding instruments that enable the human rights community (treaty bodies, international institutions, NGOs) to hold states accountable for their commitments. Human rights understood as minimum legal standards accepted by states can be used to hold them accountable for failure to meet these standards.

According to Todd Landman and Edzia Carvalho, human rights content can be defined into three concepts: “rights-in principle”, “rights-in-policy” and “rights-in practice”. In the first case, *rights measured in principle* reflect the international and

national commitments made by states. Human rights could not be justifiable by law without the creation and acceptance of legal standards by states. They would remain at the moral plane of existence without this *de jure* state compliance.⁵⁶ The Palermo Protocol sets the modern legal standard in trafficking cases in relation with the victim's human rights. This standard shapes the states obligations necessary to enable the enjoyment of such rights.

Secondly, it is obvious that the legal enactment of rights is not enough to ensure the existence of human rights. When the states accept and ratify human right obligations at the same time they are accepting to execute *policies that ensure the implementation* of the international law provisions. Thus, the monitoring process must assess how the state policies reflect on the enjoyment of rights.⁵⁷

Finally, it is necessary to determine the level of *de facto state compliance* that is the actual enjoyment of human rights by individuals and groups within the state. In practice, the state's obligation to implement human rights entails two different approaches: a negative and a positive obligation. In the first case, it is required that the states do not deny or limit access to the enjoyment of rights, eliminating any form of direct or indirect discrimination. Thus, the state must simply *negatively* refrain from preventing the enjoyment of those rights.

States cannot commit a crime like trafficking. Only private actors can be held individually responsible for such crime using different modes of liability. However, the second approach confirms that the state has a *positive obligation* regarding the provision of governance, resources and infrastructure to allow all persons to enjoy rights recognized to them by international law. Those rights will certainly be affected if a person becomes a victim of trafficking. The state's positive obligations are performed by preventing non-state actors like individuals, groups or corporations from depriving people of a guaranteed human right.⁵⁸ In trafficking cases states have no responsibility in the actual criminal act but they may be held responsible if they have not done enough to prevent the crime, prosecute the responsible and help the victim.

⁵⁶ Landman & Carvalho (2010) p.17

⁵⁷ Ibid.

⁵⁸ Ibid. p.23

At this point, I agree with Landman and Carvalho that this distinction introduces a “false dichotomy” in creating supposedly different sets of rights. All human rights have positive and negative characteristics regarding their implementation by the state.⁵⁹ In example, one may claim that in trafficking cases one of the most affected human rights can be the right to liberty and security of the victim. Of course, the state would not be held responsible for the victim’s liberty deprivation but it would be required to invest its limited resources to put into place policies and actions to prevent this situation. Thus, the state must act. If the state’s choice is to implement a policy based on prevention then it would involve actions like in example awareness raising campaigns or incrementing the level of border security controls. At the same time the state must refrain from implementing policies which during their implementation, may entail direct or indirect discrimination against vulnerable groups, which in the present example may be illegal migrants.

2.3.1 How to measure human rights?

Certainly, monitoring involves measuring the concepts and variables above mentioned. This is not an easy task as it requires “the translation of an abstract concept into some kind of quantified expression that is valid, reliable and meaningful”.⁶⁰ Landman and Carvalho present 4 different specific ways to measure human rights: events-based measures, survey-based measures, standard-based measures and socio-economic and administrative statistics.

Events-based data analysis is a form of human rights measurement which comes from the social science research tradition. It has been used in truth commissions and other projects related to the human rights field. This method produces inferences drawn from the analysis of patterns while answering the main question “who did what to whom?”.⁶¹ This method must overcome a number of challenges linked to the nature and complexity of the event itself, the unit of analysis, the type of source available and the feasibility to overcome biases in the source material.⁶²

In the same way, the *survey-based measures* draw inferences from a sample of information on the human rights situation of a target population within a particular

⁵⁹ Ibid.

⁶⁰ Ibid at 128.

⁶¹ Ibid at 57.

⁶² Ibid at 48.

context. Unlike the event-based measures, this method tends to use random samples to avoid problems such as a biased source. Using a large sample of randomly selected individuals, survey based measures explore their perceptions or experiences of human rights within a given context.⁶³

The *standard-based measures* also come from the social science field. These measures are developed in a way which is useful in monitoring, documenting and analyzing large-scale human rights violations. The method uses and codifies country level information about human rights on a standardized scale which is ordinal and limited in range. The range of the values used is limited to a few values per scale and only denote, for example, better or worse protection of human rights.⁶⁴

The fourth category of measures relies in the practice of most states in collecting official statistics on a wide range of topics to elaborate “*evidence-based policy*” and to evaluate its implementation. Most of the information comes from periodic national census and other sources like well-recognized economical indicators. The main concern is if all or some of these governance indicators may be appropriate to measure human rights. One may argue that state statistics are in general readily available and accessible and one theoretical approach holds that there is considerable overlap between human rights indicators and development statistics to the point that they can be used interchangeably.⁶⁵ Moreover, there is an increasing trend in “evidence report policy making” and reporting human rights implementation on states side. Thus, the depth and breadth of official statistics has increased involving specific indicators related to trafficking cases. However such data should be treated carefully regarding what is being measured and the strengths and limitations of its use.⁶⁶

The conceptual model above described is derived from international law and its goal is to clarify the process of measuring and monitoring states compliance with human rights. I will use these concepts along the next chapters of my thesis when discussing the research questions.

⁶³ Ibid. p.105

⁶⁴ Ibid. p. 64

⁶⁵ Ibid. p.111

⁶⁶ Ibid. p.126

3. The anti-trafficking legal framework

In November 2000, the United Nations Convention against Transnational Organized Crime (Organized Crime Convention) laid the cornerstone for global action against trafficking in persons: the Palermo Protocol. Very soon, it achieved broad consensus as the appropriate response on trafficking; during the next decade, 141 countries have ratified the Palermo Protocol,⁶⁷ and 128 countries have enacted laws prohibiting all forms of human trafficking.⁶⁸ Today, virtually all governments and international organizations acknowledge the modern concept of trafficking and the impact of this crime on its victims.

Moreover, several of the core human rights treaties provide extra content to the human rights framework in which trafficking in persons can and should be considered. In example, the prohibition of discrimination, common to all major international and regional human rights treaties, is one of the most important topics which show the intersections that may be found between international human rights law and trafficking.⁶⁹ As victims of trafficking come mostly from groups that have been traditionally vulnerable to abuse like young women and children, a human rights approach to this problem is even more pressing.

It is important to outline that the rapid acceptance of the Palermo Protocol by a great number of states finally reflected the insistence of civil society that this crime not be ignored. The convergence of legal norms around trafficking was rapid and substantial and was made possible by a broad, if not universal consensus on the nature of the problem.⁷⁰

During the last decade, each year saw advances in prosecutions, victim identification, and protection and prevention measures. And unlike a decade ago, the language of abolition has reached the upper levels of government. The fact that modern forms of slavery still exist worldwide and that it must be confronted is now

⁶⁷ UN Document CTOC/COP/2010/CRP.4

⁶⁸ US TIP Report (2011) p.4

⁶⁹ Gallagher (2010) p.478

⁷⁰ Ibid. p.465

widely accepted and promoted by heads of state and CEOs, at shareholder meetings, civil society organizations, church groups, and around the blogosphere.⁷¹

Today, the International anti-trafficking legal framework is formed by an extensive set of institutions and procedures which have the specific goal of monitoring the national implementation of the pertinent international legal provisions. This compliance network includes organisms and mechanisms established by anti-trafficking treaties and at the same time other mechanisms based on less traditional structures and processes. L. Gallagher includes in the second category “the controversial but influential reporting and sanctions system established by the U.S government” along with transnational networks operating on the basis of national government agencies, international organizations and NGOs.⁷² On the other hand, those committed to the effective implementation of the Palermo Protocol are pushing for a change in the international monitoring regime, from a self-reporting, generic and poor analysis system to an ongoing system of review that will help secure greater transparency and accountability with respect to state parties’ performance of their international treaty obligations.⁷³ The present chapter will present the main features of the major monitoring mechanisms according to Gallagher’s classification: international treaty bodies, international human rights mechanisms, the U.S reporting system and transnational networks.⁷⁴

3.1 The international conventions

Like in the case of many other “soft” human rights issues, anti trafficking struggle was “relegated to the fringes of international human rights discourse and action” for most of the last five decades.⁷⁵ The first human trafficking oversight mechanism in terms of implementation was the Working Group on Contemporary Forms of Slavery which role was related to the 1949 Anti-Trafficking Convention.⁷⁶ Unfortunately, its

⁷¹ US TIP Report (2011) p.4

⁷² Gallagher (2010) p. 461

⁷³ Ibid. p.465

⁷⁴ Ibid. p.461

⁷⁵ Ibid. p.477

⁷⁶ Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.

importance and performance within the broader international human rights system was insignificant.⁷⁷

Along almost one century, forms of contemporary exploitation have been addressed by a wide set of treaties closely related to human rights issues. Among the most relevant International Conventions it is possible to cite some addressing the trafficking problem from a sexual exploitation approach like the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. On the other hand there are other international instruments which have an approach more oriented to forced labor issues like ILO Convention 182, Elimination of Worst Forms of Child Labor, Optional Protocol to the Convention on the Rights of the Child in Armed Conflict, ILO Convention 29, Forced Labour, ILO Convention 105, Abolition of Forced Labor. Peru like many other countries has signed and ratified all of them.

3.1.1 The Palermo protocol

It was not until 2000 that this International treaty set the minimum standards to fight trafficking in persons. It also addresses governmental systems and policies that contribute to human trafficking. Following a maturing modern approach, it promoted a new approach in order to move beyond mere adoption of laws by the state parties. Rather, under the provisions contained in the Palermo Protocol, success or failure must be measured by victims served, by traffickers punished, and by abuse averted.

Another valid question is if it is possible to consider the Palermo Protocol as a Human Rights treaty on its own merit. Even though this international instrument was product from a Convention focused on organized crime issued, its significance goes further than merely establishing a modern definition for an old crime. A brief review of the content of the Palermo Protocol will clearly show its many links with human rights violations issues.

The Article 3(a) definition of trafficking in persons of the Palermo Protocol is the standard international legal definition of the phenomenon today. Unlike previous

⁷⁷ Gallagher (2010) p.477

approaches the definition in the present instrument is not restricted only to trafficking for the purpose of sexual exploitation. The definition of trafficking in persons has capital importance in that crucially affects the national legislation enacted a posteriori by the state parties. The wide definition established after long negotiations took its actual form in order to accommodate some compromises on hotly debated issues like prostitution, consent of the victim and the end purposes of trafficking.⁷⁸

In sum, trafficking in persons is defined as a complex phenomenon which consists in a combination of three basic elements. The first two elements, “action” and “means”, form the “actus reus” dimension of the crime of trafficking while the third one, “purpose”, constitutes the “mens rea” requirement. In other words, the first element refers to a human act, the second element relates to the means used in order to secure that act and the third element relates to the goal of the act for which the means are used.⁷⁹ Additionally, these elements must be fulfilled by a variety of activities that can be in turn listed as follows:

- the action of “recruitment, transportation, transfer, harbouring or receipt of persons”.⁸⁰
- by means of “the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person”.⁸¹
- for the purpose of exploitation which includes “at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs”.⁸²

Thus trafficking in persons is a combination of these three elements which should not be taken in isolation. In order to define a given situation as a trafficking in persons case, one or more activities from each of the three elements (action, means

⁷⁸ Ibid. p.27-28

⁷⁹ Ibid. p.29-34

⁸⁰ Palermo Protocol Article 3(a)

⁸¹ Ibid.

⁸² Ibid.

and purpose) must be present. However, in the case of children,⁸³ the “means” element is to be irrelevant regarding actions to intended exploitation. It has been claimed that this differentiation between types of victims, adults and minors, coupled with the provision contained in the previous paragraph of the same article may cast some doubts about the possibility of consent to exploitation. On the other hand, Gallagher also states that the reference to the inapplicability of consent just confirms that the means element of trafficking “operates to annul meaningful, informed consent”.⁸⁴

Beyond the definition contained in Article 3(a), the drafters of the Palermo Protocol approached the trafficking in persons problem from a broad scope of work which includes prevention of trafficking, prosecution (or criminalization) of traffickers and protection of the victims human rights. This approach constitutes what it is now called the “3P” paradigm in combating trafficking persons. However, it is possible to include a fourth “P” for partnership, which may be understood under the terms of the protocol as information exchange, training and bilateral or multilateral cooperation between the state parties.⁸⁵

Under the premise that trafficking is a multidimensional problem with implications in many fields of society, preventive action against it has a capital importance and must be carried out in a coordinated form. The third chapter of the Palermo Protocol is therefore concerned to outline a framework based on comprehensive policies and programs that permit prevention in the form of research, exchange of information, awareness-raising and media campaigns especially focused on vulnerable groups like women and children. It established the obligation for the states to address the factors that make those groups vulnerable through social and economic initiatives aimed to deal with extreme poverty, underdevelopment and inequality. In addition, it calls also for preventive measures to prevent victims of trafficking from re-victimisation.⁸⁶

⁸³ “Child” means any person under eighteen years of age according Article 3(d) of the Palermo Protocol.

⁸⁴ Gallagher (2010) p.28

⁸⁵ Articles 9 and 10 of the Palermo Protocol.

⁸⁶ Chapter III of the Palermo Protocol.

On the other hand, state parties are under the obligation to implement an effective criminal justice response against trafficking. In doing so, trafficking in persons must be incorporated as a crime in local legislation following the definition and legal standard established by Article 3(a) of the protocol. Moreover, traffickers must be held responsible for their crimes through adequate investigation, prosecution and adjudication leading to effective and proportionate sanctions. Special attention must be given to members of organised crime networks, since their role for the increase in trafficking has been frequently stated.⁸⁷

From a human rights perspective, the obligation to protect the victims is an essential part of the “3P” paradigm. The Palermo Protocol gives an extensive scope of work centred on protecting the rights of trafficking victims. The protocol’s Article 6, starts stressing the importance to identify victims and at the same time to protect that identity in order to assist them properly. It continues highlighting the importance of the victims’ physical, psychological and social recovery. Moreover it calls for appropriate housing; counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; In addition to medical, psychological and material assistance, the victim must receive employment, educational and training opportunities. Although in a somewhat ambiguous phrasing, the protocol provides for compensation by obliging States to ensure that trafficking victims are offered the possibility of compensation.

The adoption of the Palermo Protocol was soon followed by further developments embodied in later international instruments. Particularly important are UN Principles and Guidelines on Human Rights and Human Trafficking issued by the Economical and Social Council in 2002. In this document, protecting victims’ rights acquires paramount importance as it states the primacy of human rights while combating trafficking. UN plainly declares that “the human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims”.⁸⁸ The document clearly affirms that “states have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked

⁸⁷ Shelley (2010) p.110

⁸⁸ UN Document E/2002/68/Add.1 (2002) p.3

persons”.⁸⁹ Moreover, in doing so, the anti-trafficking measures implemented by the state must not “adversely affect the human rights and dignity of persons”,⁹⁰ in particular the rights of the victims.

Today there are voices claiming that it is time to treat the “3P” paradigm as not just a rhetorical device: prosecution alone will not free the world of this serious crime but must be fully complemented by protection and prevention. Therefore, it may be expected that the different monitoring mechanisms in use will have an increasing role in measuring state compliance with international obligations in this field. However, the role and importance of each mechanism will depend on that their level of legitimacy will mirror the general consensus achieved by the Palermo Protocol.

In sum, there are plenty of international human rights standards that address both the protection of the victims’ human rights and obligations of the states. However, according with Gallagher, notwithstanding the abundance of relevant standards, there have been few concrete examples of serious cases with the trafficking in persons issue on the part of the international human rights system. Certainly, trafficking is addressed with increased frequency by the treaty bodies, although none of them has managed to link human trafficking to a violation of a specific right in a specific treaty. In doing so, and this is important to remark, the human rights bodies had also shown a great capacity and willingness to adopt some of the most important standards on this issue, like for example Palermo’s Protocol’s definition of trafficking.⁹¹

At this point, it must be noted that none of the Organized Crime Convention’s Additional Protocols, including the Palermo Protocol, provide any form of supervision or monitoring or otherwise require States parties to report on implementation. However, the Organized Crime Convention created a Conference of Parties (COP) with the specific goal to promote and review its implementation. The COP has also an oversight role over the Additional Protocols and each state party is obliged to

⁸⁹ Ibid

⁹⁰ Ibid.

⁹¹ Gallagher (2010) p.478-479

collaborate by providing information on its programmes, plans and practices and other relevant measures that have been implemented.⁹²

Currently, the COP had met five times (in 2004, 2005, 2006, 2008 and 2010) with its next meeting scheduled in October 2012.⁹³ During its first meeting, the COP established, regarding the Palermo Protocol, a scope of work intended to be reviewed at regular intervals. In doing so, the COP produced “a voluminous and somewhat repetitive documentation” which “confirms that the reporting mechanism is a relatively crude mechanism for promoting or measuring compliance”.⁹⁴ Besides the low reporting rates, Gallagher found the information received “uneven, shallow, and often ambiguous”.⁹⁵ In sum, this mechanism provides, at best, a highly generalized scope of compliance which does not amount to even a cursory monitoring of the states parties achievements.⁹⁶

The UN Office on Drugs and Crime (UNODC) is its capacity as the custodian of the Palermo Protocol and as COP Secretariat concluded in 2008 that it is necessary to explore new options for a strengthened review mechanism. However, it must be outlined that:

“The prospect of States Parties to the Organized Crime Convention and its Trafficking Protocol being made subject to a rigorous oversight mechanism – or even a procedure capable of evaluating their performance of key obligations – appears to be remote”.⁹⁷

Clearly, states want a more transparent and efficient mechanism but with some limits. They want it focused more in assisting them to develop national policies for implementation than over sighting compliance per se. Gallagher interprets the described situation as this “appears to be a direct reaction to the unilateral monitoring and sanctioning regime established by the United States”. Moreover, the states parties request that any monitoring system under the Convention for the Palermo Protocol must respect the sovereignty of the states and be “non intrusive,

⁹² United Nations Convention against Transnational Organized Crime, at Art. 32 (1) – 32(3).

⁹³ UNODC website.

⁹⁴ Gallagher (2010) p.469

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ Gallagher (2010) p.472

impartial, non-adversarial, non-punitive and flexible”.⁹⁸ They also reject any kind of ranking of states or regions but prefer a more problem-solving approach.

3.1.2 The European Convention against human trafficking

In the European context, immediately after the adoption of the Palermo Protocol, it is possible to find different legal instruments which main goal was to regulate and supplement specific aspects of the protocol. The European Council Framework Decision of 19 July 2002 on combating trafficking in human beings and the Council Directive 2004/81/EC deal with issues related to third-country nationals who are victims of trafficking, illegal migration and victim’s cooperation with authorities. In addition, the OSCE Action Plan seeks to combat human trafficking through an advanced approach into its trafficking policies incorporating best practices and close cooperation among participating states.

Moreover, the Council of Europe decided to produce and adopt a European Convention against trafficking in human beings for a number of reasons. Trafficking is a problem that affects all Member States in some way or another as countries of origin, of transit and of destination. The Member States decided that in order to combat that problem they needed to have a legal instrument like an international treaty which has more binding force than the political recommendations above mentioned. They also wanted a comprehensive instrument addressing all the aspects of human trafficking with an approach based on human rights, especially regarding the protection of the victims. Lastly, and following the example of other regional treaties, they wanted to introduce a monitoring mechanism to help them make the necessary progress in this important task.⁹⁹

In a general scope, the European Convention complies with the rights and obligations deriving from the Palermo Protocol and is intended to reinforce victim’s protection and assistance afforded by this instrument and developing the standards established by the United Nations. I will outline the step forward made by the Council of Europe regarding the monitoring aspects of the treaty’s implementation.

⁹⁸ Ibid. p.472-473

⁹⁹ In example: the Committee for the prevention of torture or the European Social Charter Monitoring mechanism.

One of the most important added values of the European Convention is the monitoring mechanism established by it. This mechanism has two components: the Group of Experts against trafficking in human beings (henceforth GRETA) and the Committee of the Parties. Both organisms form a monitoring mechanism which main goal is the effective implementation of the European Convention by the parties.

GRETA is in essence a technical body which is composed of 10 and a maximum of 15 independent experts who shall be nationals of the states parties to the convention. They have a multidisciplinary expertise in the area of human rights, assistance and protection to victims and the combat against human trafficking.

While monitoring the implementation of the convention, GRETA may organize visits to the state parties to gather relevant information from different actors. GRETA regularly produces reports evaluating the measures taken to implement the convention by the states parties. In case that a state legally bounded by the convention does not fully comply with its obligations, it will be required to step up its action following the conclusions of the report.

On the other hand, the Committee of the Parties, as a political body, has the task to ensure the participation and cooperation of all the parties in the decision-making process and in the monitoring process of the convention. In doing so, on the basis of the reports and conclusions of GRETA, it may adopt recommendations which will be forwarded to the state party concerned.

Since the ECHR is also open for countries that are not part of the European Union (EU), the recommendations of GRETA and the Committee of the parties may have an impact on countries which are part of the convention and at the same time have a keen interest in becoming members of the EU. The precedent model of monitoring compliance inter-pares is strongly supported by countries like Norway as an effective alternative in the absence of UN sponsored monitoring body.¹⁰⁰

¹⁰⁰ Austad (2012)

3.2 The international monitoring mechanisms

The United States evaluation and reporting system was created by the Victims of Trafficking and Violence Protection Act (TVPA) in 2000. The TVPA set up “minimum standards” for combating human trafficking and the criteria for assessing the performance by states. A comparison between the U.S criteria and the international legal rules shows a high degree of overlap with some important differences which can be finding in the definition of trafficking in persons. The TVPA requires the U.S. Department of State to issue periodically reports depicting the situation of the different forms of trafficking in persons worldwide and evaluating states efforts to combat such crime against its criteria.¹⁰¹

Additionally, the TVPA established a system of rankings based on three tiers to be used in the U.S “Trafficking in Persons Report” (TIP report). The classification is the following: Tier One is for countries which fully comply with the required standards, Tier Two for those countries making consistent efforts but not yet fully compliant and Tier Three for those countries with deficit in both aspects. Later on, it was created a new intermediate category called Tier Two Watch List for those countries which do not comply with the minimum standards but are making significant efforts to do so.

Under the TVPA, the executive is empowered to deny the provision of non-humanitarian assistance to countries that do not complies with the minimum standards and that are not making significant efforts with this goal, that any countries which is placed at Tier Three. Moreover, those countries may risk U.S. opposition to their interests in procedures before financial institutions like the World Bank and International Monetary Fund. It must be noted that the TIP annual reports are the basis for determining whether and what kind of sanctions will be imposed.

There is big controversy to the fact of the U.S. government becoming the self appointed arbiter and supervisor of anti trafficking international policies. In addition, the possible politicization of their findings and “the vague and subjective standards used to asses compliance” have been subject to wide critic.¹⁰²

However, it must be recognized that the TIP Report has produced important results for the anti-trafficking cause. Particularly, its contribution to the evolution towards a

¹⁰¹ Gallagher (2010) p.481

¹⁰² Ibid. p.485

global consensus on the nature of the trafficking in persons problem is “indisputable”.¹⁰³

In despite of different opinions on their legitimacy and impact, it is clear that the TIP reports have set up the terms of any discussion on compliance with the international law of trafficking in persons. The TIP report directly states that states and governments have a direct responsibility in at least three important topics to prevent trafficking, to prosecute traffickers, and to protect victims. The outcome for each state, with potentially serious consequences, will be always questions at least in terms of legitimacy. In the end, even if it is achieving important advances, why states must be happy with an internally generated monitoring mechanism for measuring their own performance.¹⁰⁴

In sum, the U.S. government through the TIP report, by choosing to apply its national standard, has been able to set up the criteria which will be used to assess international compliance for all states. Although the mechanism has had positive effects, at the same time it could easily undermine its legitimacy.¹⁰⁵ Even worse, such regime may in the future hinder the efforts to establish a compliance system similar or in congruence with other body generated mechanism.

Peru was included in the TIP report on 2004 for the first time. Since then it is undeniable the strong influence that the report has exerted over the anti-trafficking policies designed and applied by the Peruvian state the last 8 years. This impact will be more precisely assessed under the light of the different interviews presented in chapter V.

It is undeniable the decisive role played by international human rights networks in raising awareness, shaping social attitudes and promoting anti-trafficking legislation. At both levels, national and international, human rights activists and NGOs have had an ever increasing role in international adjudication related to trafficking during the last decade. The European Human Rights Court's cases *Rantseva v. Cyprus and Russia*, and *Siliadan v. France* are good examples for this substantial role.¹⁰⁶ These

¹⁰³ Ibid.

¹⁰⁴ Ibid. p.486

¹⁰⁵ Ibid. p.497

¹⁰⁶ Ibid. p.493

decisions laid down important legal precedents for the protection of the victim's rights in cases of sexual and forced labor exploitation.

In this context, litigation at the international level is yielding important results in the implementation of the Palermo Protocol in the local arena. Transnational networks and intra national organizations are making important contributions to the adjudicative process through which states adopt anti trafficking norms generated at the international level.

4. The Peruvian situation

As in the case of almost all ancient civilizations worldwide, slavery and forced labor were not unfamiliar concepts for the first societies which were established in the territory of what would later become the Peruvian state. Ancient Mochica and Wari cultures and later the Inca Empire would use enslaved war prisoners or forced labor coming from some of their people to build the magnificent public buildings that we can admire today throughout the country. Later on, trafficking in African and Chinese forced laborers would take part in the Peruvian society as a cheap source mainly in the big rural states located along the country's coastline.¹⁰⁷ The South American countries obtained independence from Spain and Portugal in the nineteenth century, but the legacies of strict class hierarchies, the subjugation of indigenous people and limited access to education have resulted in many people being ripe for exploitation by traffickers.

4.1 Human trafficking in Peru

South America is among the poorest regions of the world, and contains societies that are highly stratified socially and economically, with large numbers of citizens remaining permanently unemployed or underemployed and many children being abandoned by desperate families. In Peru, as in many other South American countries, high levels of corruption prevail. These conditions are highly conducive to human trafficking.¹⁰⁸

Today, according to the U.S. TIP report, Peru "is a source, transit, and destination country for men, women, and children subjected to forced labor and sex trafficking".¹⁰⁹ The Report placed Peru in the tier 2 of its ranking, that is of those countries making efforts to combat human trafficking but that still not meet the standards set by the US government.¹¹⁰ The available statistical sources indicate that in Peru, most trafficking is carried out internally, and affects mainly young

¹⁰⁷ Shelley (2010) p.270-271

¹⁰⁸ Shelley (2010) p.265-266

¹⁰⁹ US TIP Report (2011) p.293

¹¹⁰ Ibid.

Peruvian women and girls who are victims of sexual exploitation.¹¹¹ According to Shelley, gender discrimination and machismo in Latin American countries help explain the disproportionate female victimization.¹¹²

Although human trafficking is first and foremost an internal phenomenon in Peru and other South American countries, it is increasingly becoming trans-national and transcontinental. Facilitating this movement are the presence of diaspora communities in affluent destination countries and the international links of organized crime groups.¹¹³ Reports show that there have been cases where Peruvian nationals are subjected to forced prostitution in other countries like Ecuador, Spain, Italy, Japan, and the United States, in addition to forced labor in Argentina, Chile, Ecuador, and Brazil.¹¹⁴

Reports from international organizations show that Peru also is a destination country for some Ecuadorian and Bolivian women and girls subjected to sex trafficking, and some Bolivian nationals in conditions of forced labour.¹¹⁵ Those foreign victims as well as an estimated several thousands of Peruvian nationals are subjected to conditions of forced labor within Peru, mainly in mining, agriculture, brick making, and domestic service.¹¹⁶

At the same time, many Peruvian young women and girls are recruited and coerced into prostitution in nightclubs, bars, and brothels in Peru's urban areas and mining centers. Most often they are recruited through false employment offers or promises of education.¹¹⁷ Traffickers operate with impunity in rural areas like the Madre de Dios province where there is little or no government presence. However, urban centers like the cities of Iquitos, Piura, Cuzco and Lima, have been identified as some of the main destinations for Peruvian sex trafficking victims. Child sex tourism is also present in these regions.¹¹⁸

¹¹¹ See Annex I with statistical information about the victim's profile.

¹¹² Shelley (2010) p.266

¹¹³ Ibid. p.268

¹¹⁴ US TIP Report (2011) p.293

¹¹⁵ IOM (2007) p.28

¹¹⁶ US TIP Report (2011) p.293

¹¹⁷ CHS (2010a) p.29

¹¹⁸ IOM (2007) p.25

Child victimization and forced labor are particularly pervasive in South American countries.¹¹⁹ The children's vulnerable situation results from poverty, broken families and drug addiction at home.¹²⁰ Forced child labor remains a problem in Peru particularly in informal gold mines, among organized begging rings in urban areas, and in cocaine production and transportation.¹²¹ Protracted civil and rebel conflicts in South America have compounded the number of vulnerable individuals ripe for exploitation, and according to Shelley "armed criminal and guerrilla groups have become traffickers by using their capacity to control and abuse their fellow citizens".¹²²

The subjugation of people during colonial rule in Peru and other South American countries has been perpetuated by domestic elites after independence¹²³. According to the most acknowledged Peruvian national newspaper thousands of children and adolescents work as domestic laborers and are subjected to exploitation and mistreatment by their employers only in the south Andean province of Puno,¹²⁴ and there is evidence that these children and adolescents are more vulnerable to also becoming victims of sexual abuse.¹²⁵

Other important newspapers have also sent repeated warnings to the authorities about the situation in the informal mining sector. It is believed that there are more than one hundred children working in the informal gold mining industry in or around the gold deposit called "La Rinconada", which is located over 5,000 meters above sea level in the southern province of Puno, not far from the Bolivian border.¹²⁶ It is possible to find reports that claim that not only Peruvian nationals are subjected to labour and sexual exploitation there, but also some Bolivian young women who have been sexually exploited in local bars.¹²⁷

It must be noted that the Peruvian society has a strong social tolerance regarding exploitation of human beings. As above described, trafficking is a social

¹¹⁹ UNODC Global Report on Trafficking in Persons (2010) p.49

¹²⁰ Shelley (2010) p.274

¹²¹ US TIP Report (2011) p.293

¹²² Shelley (2010) p.266

¹²³ Ibid.

¹²⁴ <http://elcomercio.pe/peru/1371679/noticia-mas-mil-menores-realizan-trabajos-forzados-puno>

¹²⁵ Shelley (2010) p.284

¹²⁶ <http://www.larepublica.pe/11-09-2011/la-rinconada-ciudad-burdel>

¹²⁷ Ibid.

phenomenon whose tolerance dates back to the acceptance of slavery until the modern forms of servitude. Child labor, even in appalling conditions, is regarded as an accepted way to earn the everyday subsistence for many poor families. In this context, the result is an “objectification” of children, in many cases by their own families, with poor awareness of their rights and the negative consequences of human trafficking in their lives.

The diversity of human trafficking in Peru means that there is a wide range of people and groups who traffic and facilitate the trafficking of individuals, including many employed in the legitimate economy.¹²⁸ They range from elite individuals to small entrepreneurial networks to the large organized crime groups often associated with drugs trafficking. Although there is no official number of successfully prosecuted cases, NGOs have been able to identify eleven convictions for trafficking in persons during the last ten years. All of which were related to sexual exploitation. Two of the defendants received 30 years in prison. The other sentences have ranged between 12, 10, 9, 5 and 3 years in prison. The compensations for the victims ranged from NOK 2,000 to NOK 16,000.¹²⁹

4.2 Agents and measures

Trafficking in human beings persists in South America “because of an absence of political will, financial resources, or state capacity to act”.¹³⁰ High levels of governmental corruption and the presence of organized crime groups further undermines the states’ capacity to combat trafficking. There is limited civil society and limited community involvement in helping and protecting the victims of trafficking, and most of what is provided by nongovernmental organizations is financed through foreign assistance and multilateral organizations.¹³¹

According to the U. S. TIP Report, the Peruvian government does not fully comply with the minimum standards for the elimination of trafficking; however, it is making

¹²⁸ Shelley (2010) p.285

¹²⁹ CHS Alternativo (2011) p.40-46

¹³⁰ Shelley (2010) p.269

¹³¹ Ibid. p.293

significant efforts to do so.¹³² During the last years, Peruvian authorities have implemented law enforcement efforts against sex trafficking and maintained strong public awareness efforts, including launching the first national anti-trafficking campaign.¹³³

On the other hand, the Peruvian government has failed to make sufficient efforts to address the high incidence of forced labor in the country, and has never successfully prosecuted a forced labor offense.¹³⁴ According to Shelley, the underreporting of forced labor is due to the historical tradition of the South American elites exploiting the indigenous population and slaves from foreign countries and the fact that their properties and elite status remain outside the scrutiny of law enforcement.¹³⁵ Furthermore, the Peruvian authorities have not succeeded in providing adequate services for victims of all forms of trafficking.¹³⁶

Since February 2004 the Permanent Work Group against Trafficking in Persons, an interagency committee led by the Ministry of Interior, has been in charge of coordinating and leading the states response to trafficking in persons. This group and the Anti-trafficking in persons specialized police unit have become key actors in the Peruvian states combating efforts against this crime. The government has recently formalized the national action plan to combat trafficking that the interagency committee members drafted in 2006. During 2011, the Peruvian authorities launched the first national campaign against trafficking, although with limited results.¹³⁷ In addition, the government has provided training to officials and tourism service providers about child sex tourism, conducted several public awareness campaigns on the issue, and promoted codes of conduct for tour service providers'.¹³⁸

4.2 1 The Police and judiciary

The Government of Peru has continued to combat forced prostitution through law enforcement measures the recent years, but at the same time it showed weak efforts

¹³² US TIP report (2011) p.294

¹³³ Ibid.

¹³⁴ CHS Alternativo (2011) p.40-41

¹³⁵ Shelley (2010) p.283-284

¹³⁶ Valdes (2012), Encinas (2012)

¹³⁷ Encinas (2012)

¹³⁸ Soto (2012)

to investigate and prosecute forced labor offenses. Law 28950 of 2007 prohibits all forms of trafficking in persons, prescribing penalties of eight to more than 25 years' imprisonment.¹³⁹ These penalties are sufficiently stringent and fully comply with the standards established by the Palermo Protocol. Together with its complementary legislation and the National Plan of Action against human trafficking, approved in October 2011, they constitute the cornerstone of the legislative implementation of the Palermo Protocol in Peru. One of my informants plainly declared "the legislation is already there".¹⁴⁰ However, NGOs have reported that police officers, prosecutors, and judges often choose to classify human trafficking cases as less serious criminal offenses that imply lower penalties.¹⁴¹

In 2006, the Peruvian National Police implemented the "RETA System" as an official Registry and Statistical system focused on the crime of trafficking in persons. Two years later, the first national Division of Investigation against trafficking in persons, División de Investigación de Trata de Personas (DIVINTRAP) was created.¹⁴² At the moment of its creation, DIVINTRAP consisted of only 32 officers and is still based in the capital city of Lima. The police have maintained and expanded the use of RETA, although this system does not track judicial activity, such as prosecutions and convictions. Furthermore, CHS Alternativo, partner in the implementation of the system, have reported that the system is not always used efficiently, as police in some areas do not enter investigations into the system in a timely way or at all.¹⁴³ Prosecutors are supposed to be present with the police on raids on brothels and other locations where trafficking is suspected, but NGOs have reported that sometimes poor coordination has led to delayed action.¹⁴⁴

4.2.2 The welfare authorities

The Peruvian government has provided only limited assistance to victims of trafficking. Furthermore, welfare agencies have not a formal mechanism for identifying victims among vulnerable populations, such as adult women in prostitution or children in the informal mining sector. To make things worse, the

¹³⁹ CHS Alternativo (2011) p.16-22

¹⁴⁰ Villaroel (2012)

¹⁴¹ US TIP report (2011) p. 294

¹⁴² R.D: 277-2008-DIRGEN/EMG

¹⁴³ Valdes (2012)

¹⁴⁴ US TIP report (2011) p.294

government has no formal process for referring trafficking victims for the necessary treatment in accordance to the Palermo Protocol provisions.¹⁴⁵

The Peruvian authorities have reported referring several victims of trafficking, women and minors, to the government's welfare network, though these centers are not specifically equipped or staffed to care for victims of trafficking. Currently, the Peruvian national police runs centers for minors where some child victims of trafficking were temporarily housed while waiting to be referred to other shelters for services.¹⁴⁶

In general, due to this lack of support, victim participation in the investigation or prosecution of traffickers is limited in Peru, although several victims under government protection have chosen to testify against their traffickers during the last years. Recently, the case of J.P, a woman in her early twenties who was lured and exploited by a prostitution ring in a night club, has become the paradigm of the conditions in which many victims of trafficking live in Peru: little support from the authorities, long judiciary procedures and permanent fear of trafficker's retaliation.¹⁴⁷ Today, her case, sponsored by an NGO, is the centre of a media campaign aimed to bring their exploiters into court.¹⁴⁸

4.2.3 NGOs

While facing a situation of weak and poorly financed legal systems and unresponsive state bureaucracy, the nongovernmental actors are crucial actors in identifying and reporting on cases of trafficking in persons and in informing the public, the media and international organisms when the authorities have failed to fulfill their obligations.

In the above mentioned emblematic case, precisely NGOs and the media reported that local authorities protected the owner of a night club frequented by police officers and prosecutors where several young women were subjected to forced prostitution. Moreover, they revealed that one of the main witnesses in this case died when she

¹⁴⁵ Valdes (2012)

¹⁴⁶ US TIP report (2011) p. 295

¹⁴⁷ CHS Alternativo (2011) Documentary - "La Noche de Jhinna"

¹⁴⁸ See "Justicia para Jhinna" campaign web site

<http://tratadepersonasenelperu.blogspot.no/2012/06/justicia-para-jhinna-1000-dias-de.html>

was run over by the accused trafficker, stressing a need for better witness and victim protection.¹⁴⁹

In partnership with the government, the NGOs have implemented awareness raising campaigns and at the same time provided training on human trafficking to police officers, immigration officials, and social workers, among others. The NGOs are key actors in raising the public's awareness to the fact that sexual and labor exploitation is to be regarded as a crime of human trafficking.

Some NGOs provide care and shelters to sexually exploited women. However, specialized services and shelters for adult victims of trafficking are largely unavailable in Peru. NGOs report cases where adult victims are housed in police facilities as no other shelter is available with little or no assistance. At the time of writing this thesis, the government does not provide financial assistance to anti-trafficking NGOs and adequate victim services remain unavailable in large parts of the country.¹⁵⁰

¹⁴⁹ CHS Alternativo (2011) Documentary

¹⁵⁰ US TIP Report (2011) p.295

5. The monitoring process in Peru

During my four weeks field work in Peru the spring of 2012, I was able to identify a number of actors which have a role in the monitoring process on trafficking persons. In total, I was able to conduct eight interviews under the semi-structured interview using a prepared questionnaire.¹⁵¹ Some of these actors represent institutions which are part of the Peruvian state while others are nongovernmental actors, and as I will show later, they apply different methods and goals while monitoring.

5.1 Who are the monitors?

In first place it is necessary to mention the Peruvian police force and its corresponding institution, the Ministry of Interior, as the natural place where every monitoring related to a criminal activity must begin. Since the beginning trafficking in persons was defined as a problem of transnational organized crime¹⁵², and therefore it has been customized to view the police as the main responsible and coordinating actor in combating human trafficking worldwide. The case of Peru is not an exception.

According to all the police officers interviewed, during the last years there have been continuous efforts in raising awareness and training staff on the new paradigm of combating trafficking in persons established by the Palermo Protocol.¹⁵³ However, it has not been easy to change old prejudices and ideas regarding trafficking supported by social tolerance of sexual exploitation and labor. Before the creation of the specialized police unit against Trafficking in Persons in 2005 (DIVINTRAP), the police showed very little interest in this new way to approach and tackle the human trafficking problem.

Furthermore, since its creation the DIVINTRAP has become the operational hub of the anti-trafficking efforts within the Peruvian police. They not only plan and execute the largest police operations nationally but also provide training and counseling to other local units of the police when requested regarding cases of trafficking in

¹⁵¹ See annex n. 2 and n.3

¹⁵² The Palermo Protocol is part of the United Nations convention against transnational organized crime.

¹⁵³ Coronel Tello (2012), Commander Gonzales (2012) and Mayor Gutierrez (2012)

persons.¹⁵⁴ All the units must report their local cases to the DIVINTRAP in order to keep the RETA system updated. Moreover, there is established a constant coordination with the superior level which is placed at the Ministry of Interior.¹⁵⁵

In a second level within the Ministry of Interior, it is possible to locate the Secretariat of Human Rights which is in lead of the Permanent Multisectoral Working Group against Trafficking in Persons (hereafter called “the Permanent Working Group”). According with a Secretariat’s functionary that I interviewed¹⁵⁶, they perform coordination and monitoring of the efforts against trafficking in persons. Although, it is important to note that their coordination and monitoring of anti-trafficking efforts has been limited by other tasks that they are also responsible of, as for example supervision of the prison system and training of police personnel in other human rights topics. The Secretariat of Human Rights considers itself to have a constant and fruitful relationship with other actors that work with anti-trafficking issues, as for example NGOs and other public institutions besides the police.

Lately, the Public Prosecutor office has gradually implemented monitoring within its own jurisdiction. Specifically, two district attorney’s offices have been designated to perform monitoring task which at the same time include training duties for personnel within the institution which is still not familiarized with the relatively recent national legislation on human trafficking and the Palermo Protocol obligations.

The Peruvian Ombudsman Office has developed to become one of the leading actors in monitoring efforts against human trafficking¹⁵⁷. In the beginning the Ombudsman Office did not participate in the Permanent Working Group. This late entry of a national monitoring mechanism of public policies, like the Ombudsman Office in the field of anti-trafficking, is most likely not a Peruvian particularity. Since human trafficking was defined in a convention against transnational crime, it seems to have been a worldwide pattern that national monitoring mechanisms and other human rights stakeholders have not been invited or taken initiative to participate in the national efforts against human trafficking. Originally, the police and the judiciary system have been the leading monitoring agency in the field of trafficking in persons.

¹⁵⁴ Commander Gonzales (2012) and Major Gutierrez (2012)

¹⁵⁵ Encinas (2012) Senior Advisor to the Secretariat of Human Rights,

¹⁵⁶ Ibid.

¹⁵⁷ CHS Alternativo (2010) p.117

Nowadays, the Peruvian Ombudsman office is elaborating a national report which main goal is to evaluate the compliance of the public institutions with the anti-trafficking provisions recently enacted. The report focuses on the human rights of the victims, and to what extent the public institutions are fulfilling their commitment to identify, protect and support the victims of trafficking¹⁵⁸.

Since the beginning of the process of implementation of the Palermo Protocol in the Peruvian legal system, the civil society through different NGOs has played a paramount role. For periods the NGOs have been the solitary driving force in raising awareness on the problems of trafficking in persons, and pushing for the passing of necessary legislation like the National Action Plan against trafficking in Persons. Among them it is important to mention CHS Alternativo which is among the most important nongovernmental actors in the field of trafficking in persons and other human rights issues in Peru.

The welfare agencies of Peru are not engaged in any monitoring activities. This must be interpreted as a consequence of their lack of organized response to the problem of trafficking in persons in all. This lack of response and responsibility is not solely apparent in the field of trafficking in persons, but rather a symptom of a state which does not consider the victims of crime as a social problem in general¹⁵⁹. Although the welfare agencies are included in the Permanent Working Group against Trafficking, their attendance and participation seem to have been irregular and without substance¹⁶⁰. On the other hand, an apparently peripheral actor as the Ministry of Tourism and External Commerce has performed a limited but meaningful role in initiating efforts aimed at preventing human trafficking. Their monitoring role is however limited to report on awareness raising campaigns and the training of public officials¹⁶¹.

Last but not least, all the interviewees have stressed the tremendous influence that the U.S. Embassy in Peru has had on both the implementation and monitoring process of the anti-trafficking efforts conducted by the Peruvian state. Since 2004, in an informal way, all the above mentioned actors conduct annual reports to the U.S.

¹⁵⁸ Villaroel (2012)

¹⁵⁹ Encinas (2012)

¹⁶⁰ Valdes (2012)

¹⁶¹ Soto (2012)

Embassy. The reporting bodies are very aware of the fact that their reports will lead to the rating of the Peruvian efforts in the U.S. TIP Report, and therefore they timely answer the embassy's request of information and show eagerness to meet the standards set by the U.S. Government. One of my informants in the Ministry of Interior describes the reporting to the U.S. Embassy as "...the most busy part of the year"¹⁶². The date of the release of the U.S. TIP Report is regarded by all the Peruvian actors as the highlight of the year, and they consider the country's ranking as a final assessment of the country's efforts.

5.2 How the monitoring is carried out?

As I described in chapter 2, theories on monitoring mechanisms differ between different actors and which methods they choose to use. In this section I will present what kind of methods the different monitoring bodies are using, and relate these to the theories presented in chapter 2.

The Peruvian police have through its anti-trafficking unit gathered a sizable amount of information related to human trafficking cases occurred state-wide since 2004. Parallel to the creation of the DIVINTRAP it was deemed necessary to give this unit the necessary means and resources to combat trafficking in a more effective way. This was the main reason given for the creation of the RETA system with support of the NGO CHS Alternativo and the US cooperation.

Since its implementation in 2006, the RETA system has become the most important official source of statistically relevant data on trafficking in persons available in Peru and it is widely quoted in official reports and by the media. This technological tool operates on a web based platform hosted in a private server owned by the police. The authorized users, all of them police or Ministry of Interior's public officers, have a username and a password which enable them to register trafficking in persons cases from all parts of the country. It is a very comprehensive register which contains a wide set of indicators, as for example: name, age and place of origin of the victim and the suspect, police inquiries, places and events related to the crime and detailed chronology. The RETA system also provides a classification of the cases according

¹⁶² Major Gutierrez (2012)

to the different types of exploitation (i.e. sexual exploitation or forced labor). Moreover, it also permits the users to register other related criminal offences like people smuggling, pimping, child pornography, etc. The RETA system is considered a fundamental tool to produce an accurate picture of the situation of human trafficking in Peru and the strategies to combat it.¹⁶³

As for now, the RETA system is almost the sole source quoted by media or state officials when it comes to discussing the issue of trafficking in persons in Peru. Two senior Peruvian police officers who are former members of the DIVINTRAP¹⁶⁴, in their interview recognize the importance of the RETA system as a potential main source for data in the production of knowledge about trafficking in persons in Peru. They also outline the extensive work performed in order to train police officers in its use. In their opinion, this training permits the police personnel not only to learn how to use the system but also gives them important knowledge about the modern concept of human trafficking. However, none of them describe a practical use of the rich amount of data gathered by the RETA beyond reporting to their superiors in the Ministry of Interior. Therefore, an important tool for knowledge production and planning of strategic police work seems to remain unused, and does not contribute to the advancement of the state anti-trafficking policy. This is a problem that still continued as it involves a change of mentality that has not yet been produced in all police personnel.

The socio-economic statistics that RETA contains are not being used to the maximum potential, as only a very few aspects of the database's content are being reported to the Ministry of Interior. For example, the statistics are never being used to support policies directed at improving the prevention and protection of victims of trafficking. The statistics show that regions or groups of persons are especially vulnerable and in need of support by welfare services, but are not being used to support such policies.¹⁶⁵

In the Ministry of Interior the Secretariat of Human Rights' role is mainly limited to receive the reports from the police. An NGO informant describes the monitoring work of the Secretariat and the Permanent Working Group as being "...very poor, and

¹⁶³ CHS Alternativo (2010b) p.5

¹⁶⁴ Commander Gonzales (2012) and Major Gutierrez (2012).

¹⁶⁵ Valdes (2012)

basically reduced to requesting reports that they can send to the U.S. Embassy. Let us call it a reactive monitoring”¹⁶⁶. Once again, the socio-economic and administrative statistics are not being used to its full potential by the main responsible and coordinating ministry. The same NGO informant claims that “The state had practically not done anything until the first warning from the U.S. Department of State in 2004. Monitoring did not exist at all before that. Gradually the media has also become involved in the request for information”.¹⁶⁷

Meanwhile, the Public Prosecutor office has gradually implemented monitoring within its own jurisdiction.¹⁶⁸ This monitoring was implemented in a later stage than the monitoring performed by the Ministry of Interior, and the two monitoring bodies do not coordinate their monitoring efforts. This lack of coordination is due to the fact that the police and the Ministry of Interior only have knowledge about the input data in form of cases being reported and investigated, while the Public Prosecutor only has information on the output data in form of what cases are being presented in court. The aggregated information from the two monitoring bodies is shared in the Permanent Working Group, but at that stage it is not possible to match numbers as the reporting and monitoring process has been conducted in totally separate tracks.¹⁶⁹

As of May 2012, the Ombudsman has not yet issued any official report on the human trafficking situation in Peru assessing the state’s compliance with international compromises regarding this topic. However, my informant says that the report will be published by November 2012¹⁷⁰. The Ombudsman has not designed a specific methodology and tools to be used in making this report, but say that they most likely will follow the same methodology used in previous reports issued by the Ombudsman office for other topics.¹⁷¹

Normally the Ombudsman office request information from all public institutions and NGOs involved in certain topic of interest. Then they prepare an analytic report

¹⁶⁶ Ibid

¹⁶⁷ Ibid

¹⁶⁸ M. Romero, District Attorney representing the General Prosecutor at the Permanent Group (2012).

¹⁶⁹ It must be noted that the statistic information coming from the RETA is preferred while reporting by the media and NGOs.

¹⁷⁰ Villaroel (2012)

¹⁷¹ At the time of writing, the Ombudsman offices has issued 156 situational reports on a wide set of human rights’ related topics in Peru (www.defensoria.gob.pe)

describing the situation and giving a number of recommendations to improve it. After the report is published, it is customary practice of the Ombudsman to perform a follow-up monitoring of the implementation of their recommendations. The Ombudsman has no power to order specific actions, but gradually its recommendations has been more and more influential on the public sector, and it seems to have pushed actions in motion¹⁷².

On the NGOs side, it must be outlined that CHS Alternativo is the only NGO which has implemented a periodical and comprehensive monitoring mechanism based on what is called “social accountability”.¹⁷³ Since 2009, using the constitutional right to access to public information, CHS Alternativo has been requesting information at the local and national level, about the actions taken by the government to implement the Peruvian legislation on trafficking. At the time of writing this thesis, CHS Alternativo has issued two annual reports assessing the anti-trafficking efforts in 2009 and 2010, with a third report (on 2011) to be released soon. The main goal of this monitoring effort is to identify strengths and weaknesses in the process of enforcing the law in a constructive way.

As an actor coming from the civil society, CHS Alternativo aspires to participate and contribute to the Peruvian state’s actions and policies against trafficking in persons. In doing so, the methodology used in its two later reports uses basically a survey-based methodology accompanied by an extensive analysis on socio-economic and administrative statistics. Additionally, CHS Alternativo has published a number of studies, in which the narrative used corresponds to a events-based measure methodology while describing human trafficking cases in trial before the Peruvian judicial system.

Within the framework of the U.S. TIP Report, the local embassy annually conducts a research based on the criteria presented in chapter two. They send a survey to all public and private actors involved in the anti-trafficking work in the country. In the survey they ask for statistical information on number of victims identified and the number of cases investigated and prosecuted. Also they ask for examples of good practice and specific challenging issues. This process begins every year in October

¹⁷² CHS Alternativo (2010b) p.117

¹⁷³ Valdes (2012)

and stirs up a number of actions and responses aimed to meet the minimum requirements. The model described is based on a mix of events-based and survey based measures methodologies, with the added use of administrative statistics mainly provide by the police and more recently by the public prosecutor office. However, it has its shortcomings. There are examples of the Police performing “last-moment” operations of a sizeable magnitude in order to improve the statistics being reported to the US Embassy¹⁷⁴.

5.3 What are the challenges?

Even though it is possible to claim that anti-trafficking efforts in Peru have been subject to some kind of monitoring, the evidence collected shows that the monitoring efforts have been insufficient, uncoordinated and incomplete¹⁷⁵. Analyzing my interviews, I find that the Peruvian monitoring efforts have been *insufficient* because not all responsible actors have performed monitoring activities within their sphere of responsibility. Some actors, like the police and some NGOs, initiated monitoring activities at an early stage. But, important actors like the Ombudsman office and the Public prosecutor have only recently initiated such efforts. Other important actors, like the welfare agencies, are still not actively participating in monitoring activities.

Furthermore, I will describe the Peruvian monitoring mechanisms as *uncoordinated* based on the fact that the Permanent Working Group is not able to process aggregated and comparable data from all responsible actors on a national level. In order to do so, the Permanent Working Group would have to make a standard report system on an individual case by case level. This would require a standardized registration and report methodology which does not exist today. Finally, I consider the Peruvian monitoring mechanisms to be *incomplete* due to the fact that even within each responsible agency, different low level offices do not gather all the data that they are supposed to do according to their own methodological standards. For example, the level of compliance in the police’s use of the RETA system will differ between units and territorial jurisdictions.

¹⁷⁴ Valdes (2012)

¹⁷⁵ Ibid.

In spite of some good practices like the implementation of the RETA System by the Peruvian police or the reports issued by NGOs, the general practice of monitoring is not meeting the standards of a national system with the characteristics given by Doek and mentioned in the second chapter of this thesis. A successful monitoring system must be capable to hold the state responsible for the implementation of the Palermo Protocol provisions already reflected in the local legislation. Furthermore, it must be directed by an existing national human rights institution with a clear mandate and independent performance¹⁷⁶.

On the other hand, a monitoring institution should continue to work together with governmental and nongovernmental actors. The former as the source of the information required to evaluate the state and the latter as an alternative source of information and as a verification agent. This interaction should make it possible to develop a common and coordinated monitoring methodology which does not exist today and to share good practices that are already in use. However, it must be noted that this activity may distract the monitoring institution into the daily, time consuming but important discussion common in this type of forum. In addition, being involved in this may also affect the necessary independent scope that such a body must have when monitoring.

A possible solution can be to leave the coordinating task to the body which is already performing it, that is the Permanent Working Group, and to assign the core monitoring tasks like analysis, interpretation, and validation of the information to another institution. At the same time, the monitoring institution may focus also in providing a necessary feedback to the actors through well-founded recommendations. Later, a follow-up of these recommendations may lead to a consistent and to some extent continuous monitoring process. In sum, what is proposed here is to clarify and separate the functions of institutions working as a national referral mechanism from those belonging to an independent monitoring body.

In this context, the main challenge in the domestic front is to establish a monitoring system that may be lead by a national rapporteur office designed and based on the Dutch model. During twelve years the Dutch National rapporteur has confronted the

¹⁷⁶ Doek (2002) p.3

task of collecting reliable data and processing it in order to get a comprehensive panorama of the human trafficking problem in that country¹⁷⁷. The resulting reports have developed a working methodology that may be well replicated in countries like Peru.

At the international level, the main task will fall on the NGOs responsibility to promote adjudication of human trafficking cases on the international arena when lack of law enforcement, like in the case of J.P, comes into account. One of the interviewees states that the Inter-American human rights system offers a number of possibilities which have not been yet explored.¹⁷⁸ Furthermore, in a long term approach, the creation of a panel of experts with the same characteristics as the European Group of Experts on Action against Trafficking in Human Beings (GRETA), would be highly advisable. An institution similar to GRETA may enable American countries to have a coordinating, mutual assistance and peer-monitoring space that do not exist today.

Finally, the key challenge regarding monitoring anti-trafficking efforts in Peru consists in making this process more professional and less empirical with clear goals and significant results. Until now, according to one of my informants, the monitoring like other anti-trafficking activities have been left largely to the good will of state officials, whom rarely share the same level of compromise or knowledge regarding this problem.¹⁷⁹ Through its institutionalization is the only way in which monitoring will evolve into an important process with a real impact on planning and implementing public policies against trafficking. Then, the large amounts of scattered information that different actors have today will become valid, reliable and useful.

5.4 Success and risk factors

After almost one decade after ratifying the Palermo Protocol, both Peruvian government and society have today a better knowledge about what human trafficking is. Today, there is greater awareness of the trafficking problem and its consequences and ramifications to other problems like people smuggling and

¹⁷⁷ Seventh Report of the Dutch National Rapporteur

¹⁷⁸ Valdes (2012)

¹⁷⁹ Encinas (2012)

organized crime. All of the interviewees agreed that the perception of human trafficking as a serious problem has increased and that a wide range of measures are being taken to fight traffickers when compared with the past. Efforts to combat human trafficking are receiving a lot of attention, both in the media and in political circles. Certainly there have been results, but my informants agree that there is still a long way ahead.

On one hand, there are many public institutions taking measures and achieving results in the field, notably the police. Over the years a specialized unit has been created and expanded, large numbers personnel of the police force and other law enforcement agencies have been trained, and legislation has been enacted in accordance with the principles established by the Palermo Protocol. Moreover, a monitoring mechanism based on socio-economic and administrative statistics has been implemented in the form of the RETA System. However, there is an opinion stating that it has not been used to its full capabilities.¹⁸⁰

On the other hand, you find a civil society sector formed by NGOs which is alert and have initiated a monitoring process alternative to the state, as in the above mentioned case of CHS Alternativo. In recent years, they have begun an articulating process which led to the creation of national networks with a special interest in the problem of human trafficking and the rights of its victims.

Another window open for success is represented by the intervention of the Ombudsman office in monitoring the implementation of the state's anti-trafficking policy. The last years have witnessed the strengthening of the Ombudsman's data monitoring and collection system throughout the national ambit. Likewise, an increasingly relevant presence has been attained by the Ombudsman in the process of dialogue and coordination which takes place in the Permanent Working Group entered by the parties for solving mutual issues, and progress is being attained in the investigation of specific issues related to the structural causes of conflicts.

In this context, the release of the Ombudsman's report next October constitutes an important opportunity. The institutions that formerly have received recommendations from the Ombudsman's Office have to a large extent assimilated them, evidencing

¹⁸⁰ Valdes (2012)

an actual level of trust in the Ombudsman's "research and acknowledging these findings".¹⁸¹ No matter how sad and frustrating may be the first findings of this report; it will be the decisive step towards the implementation of a permanent state-wide monitoring system on human trafficking.

However, the risk of state's inertia is always present. It must be kept in mind that it took almost five years to finish and finally approve the National Action Plan against Human Trafficking. Moreover, after an initial euphoria at the time of its approval in October 2011, the state has turn again to an apathetic mood doing little for its implementation, having called for a Permanent Working Group meeting only once.

There are a number of reasons for the described situation. Among them are two important ones which have been mentioned by two of the interviewed sources.¹⁸² The first one is the constant political instability within the higher strata of the Ministry of Interior which leads the coordinating body, the Permanent Working Group, through the Human Rights Secretariat. In a country with weak institutions and public order instability due to structural causes like poverty and social inequality, this is not strange. It is symptomatic that since 2006 there have been 10 successive Ministers of Interior, with in average less than one year in office. This situation produces waste of time and resources while the new authorities take command of their new position and causes constant disruption in the formation of the political will necessary to decide priorities. Such an unclear panorama may result in uncoordinated and merely reactive actions with little permanent results like the big police operation performed in 2011, in which the authorities claimed to have rescued 250 young women from sexual slavery in mining camps located in the Amazonian forest.¹⁸³ This operation did not include a follow up regarding the actual situation of the alleged victims, and was loudly criticized as a mere show intended for a visiting high official of the U.S. Department of State.¹⁸⁴ It is unclear if the U.S. Embassy aware of this situation but in any case the U.S. government use Peruvian police reports as a source in the annual report on trafficking.

¹⁸¹ Villaroel (2012).

¹⁸² Valdes (2012) and Encinas (2012)

¹⁸³ <http://thecnnfreedomproject.blogs.cnn.com/2011/10/05/underage-prostitutes-rescued-in-peru/>

¹⁸⁴ Valdés (2012)

A second reason for the situation of monitoring human trafficking in Peru is the lack of economic resources. Due to a void, to the unequal distribution of funds, to negligence or other unknown reasons, there is no budget assigned to fund the implementation of the National Action Plan against Human Trafficking, less to say to monitor it.¹⁸⁵ This leads to a situation where implementation and monitoring is left largely to the good will of functionaries with knowledge and sensibility for the problem, who can spare some of their funds for this purpose but who are unable to build a permanent process. As my informant mentioned at the end of his interview, political will coupled with a clear mandate and minimum founding are the keys necessary to implement the anti-trafficking legislation¹⁸⁶.

Another risk is that the monitoring system laid down by the U.S. Department of State in the form of its Annual TIP Reports may soon begin to show its limitations as a political tool. This may have serious consequences at the time being as the country is entering the crucial point of implementation of its own policies and legislation. Once again, it must be kept in mind that this monitoring system, although sui generis, is generally considered as the driving force behind almost all anti-trafficking effort, including monitoring, carried out in Peru until now.¹⁸⁷ The United States are certainly an important influence on internal and external politics in Peru as it is in other countries worldwide, but diplomatic focus on one specific subject may change over the time. Although it is not likely that, in the foreseeable future, US may lose its interest in combating trafficking in persons, it is possible that this monitoring method may lose some of its political force. In particular, the moment where there is nothing left with which U.S. may exert influence over the Peruvian state may arrive, at least when it comes to the field of human trafficking. In 2004, there were ongoing negotiations between the two countries over the feasibility of a free trade agreement. Now that this agreement is fully implemented and that all possible legislation at the local level is enacted, some Peruvian public functionaries may arrive to the conclusion that they have fulfilled their part and that they have other more pressing priorities.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

¹⁸⁷ Encinas (2012), Valdes (2012) and Villaroel (2012)

Finally, there is the risk that inadequate or incomplete monitoring may not help to shift the focus from a crime-based scope of work to a more Human Right's oriented approach on the problem of trafficking. The monitoring results performed until now shows that there is still little attention given to the victims of trafficking and that there is an overwhelming tendency to identify it only with sexual exploitation purposes.¹⁸⁸ This must be changed if the country genuinely wants to comply with the human rights approach towards human trafficking established by the Palermo Protocol and its complementary UN instruments, and certainly monitoring may help in this purpose.¹⁸⁹

5.5 How can we improve the implementation and monitoring process?

First, monitoring must show achievements and flaws and further indicate the future steps to be taken in anti-trafficking policies. It is necessary to link monitoring with the state compliance to international obligations regarding trafficking. From the state's side, monitoring efforts must be conducted with a clearer scope of work with explicit goals and schedules. Once the state has, like in the case of Peru, a clearly defined set of aims contained in a National Action Plan, and then monitoring becomes the key tool which orients its implementation.

In particular, state institutions must use their own statistical information in a more productive way. Today, as it has been discussed above, this is not the case. If the state officials find this information useful for something else than to just present numbers to the media or to answer information requests from a foreign embassy, then they will see this process as something that can lead and give conceptual strength to their daily efforts against trafficking. This something else is using monitoring results as the main input for their decision making process while combating trafficking.

In this context, the publication of the Ombudsman office report on trafficking will represent a big opportunity to finally have a good starting point for an independent and more organized monitoring process. This institution has the expertise and moral authority to give recommendations that may result in concrete results. Moreover, it

¹⁸⁸ Encinas (2012) and Valdes (2012)

¹⁸⁹ Valdes (2012)

has the continuous practice of monitoring the state's commitment in the follow-up of its recommendations.

One important point that must not be set aside is that this report may well be part of the Annual Presentation of the Ombudsman at the national parliament. Therefore it may become an invaluable way to achieve political incidence at the highest level of decision making.

From a civil society perspective, the NGOs must continue with independent reporting which can be used as an alternative mean of verification for the information provided by official sources. The valuable network and joint work forged the last years with the police and other state institutions must be strengthened in order to achieve the adequate level of coordination for helping the victims and protecting their human rights.

Finally, there is always a last resource that although it has been widely used in other cases of violations of human rights, in the case of human trafficking has not been used yet. Litigation at the international level is an alternative that NGOs, not only in Peru but in all Latin-America, must explore for cases of trafficking in which, like in the case of J.P, the local system has showed insufficient interest for whatever reason.

6. Conclusion

When I began writing this thesis some months ago I had the intention to focus my research on monitoring mechanisms based on international body treaties. However, after reading about national monitoring systems already functioning and interviewing key actors in Peru I decided to give more attention to the internal processes and find ways to improve them. Although the implementation and the job performed of mechanisms like the UN Special Rapporteur on Trafficking in Persons, especially women and children is without any doubt important, it is of capital importance that countries like Peru give a greater attention and efforts to improve their own national systems.

In the second chapter, I presented the modern conceptual framework in which trafficking in persons must be understood nowadays. As an extremely complex problem which cannot be only addressed from an organized crime or migration policy approach, I presented the growing opinion among the scholars about the human rights implications of human trafficking. Additionally, I summarized the theoretical framework and methodology proposed by Landmann and Carvalho to relate human rights measures with monitoring the degree to which states respect, protect and implement the different rights recognized in the various treaties to which they may be a party.

Later, the third chapter described the main important features in which the international legal framework mirrored the concepts addressed in the previous chapter. Likely, I presented the different forms in which monitoring on human trafficking is performed at the international and national levels. Using actual examples I showed the main features that each model has and the benefits and problems attached.

The fourth chapter summarized the situation regarding trafficking in persons in Peru and the efforts made by the Peruvian state and NGOs to give adequate response to this serious crime according to the standards described above. In doing so, I focused my description on those actors that in practice have performed some kind of monitoring over their performance.

Finally, in my last chapter, analyzing relevant information gathered through interviews, I have shown that in spite of some valuable good practices of some key actors, there is still much to do in order to monitor state compliance to international state obligations regarding trafficking in Peru. However, I have detected a promising opportunity in the form of the growing intervention of the Peruvian Ombudsman Office in this field. The publication of its report on human trafficking and the expected recommendations that it may generate are an important step toward the implementation of an effective, independent and permanent monitoring system on trafficking issues in Peru. Although, without reading the future report, it is still too early to affirm that this result will be achieved in the future. The prestige and high standards reached by the Peruvian Ombudsman office in Peru may on the other hand permit some moderate optimism in this sense.

One of the main goals of this thesis was to propose better ways to perform monitoring in a country with political instability and continuous lack of adequate founding, like Peru. Certainly, the country has a weak legal system which in many cases has hindered all effort directed to combat human trafficking. In addition, fragile state institutions such as those part of the welfare system make the work toward the victims' recuperation extremely difficult.

However, monitoring efforts in Peru, in spite of their evident flaws, have contributed to the better understanding of human trafficking as a serious problem beyond a strict organized crime scope of work, guiding the actors much into the way of the Palermo Protocol and complementary legislation stance. Monitoring is the best way to bind process and to ensure a true commitment from the state to the human rights standards that they have accepted. This action in the short term will lead to the creation of a complete binding jurisprudence on the interpretation and implementation of the Palermo Protocol. In the end, states must be held accountable not only for what they have done, but also for what they have not done.

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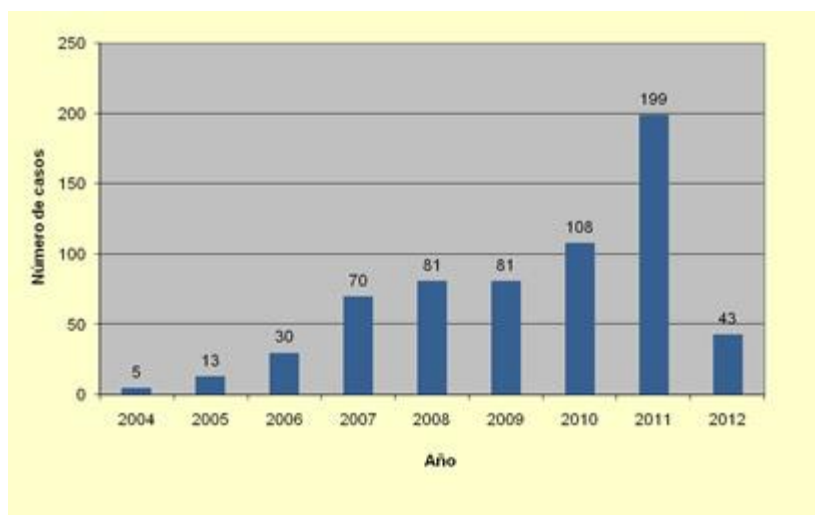
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8. Annex

Annex 1: Statistics on Trafficking in Persons in Peru by april 2012¹⁹⁰

Table N.1

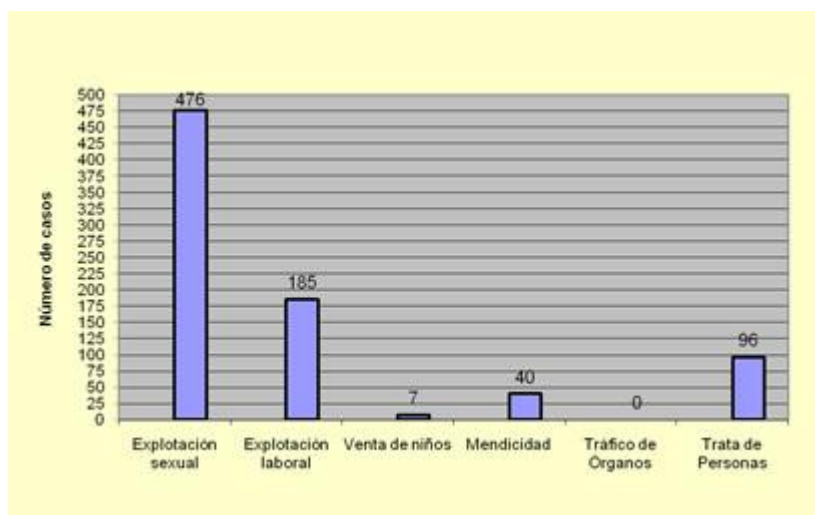
Cases per year
Total: 630



Source: CHS Alternativo based on numbers retrieved from RETA System

Table N.2

Cases according to presumed type of exploitation
Total: 630¹⁹¹



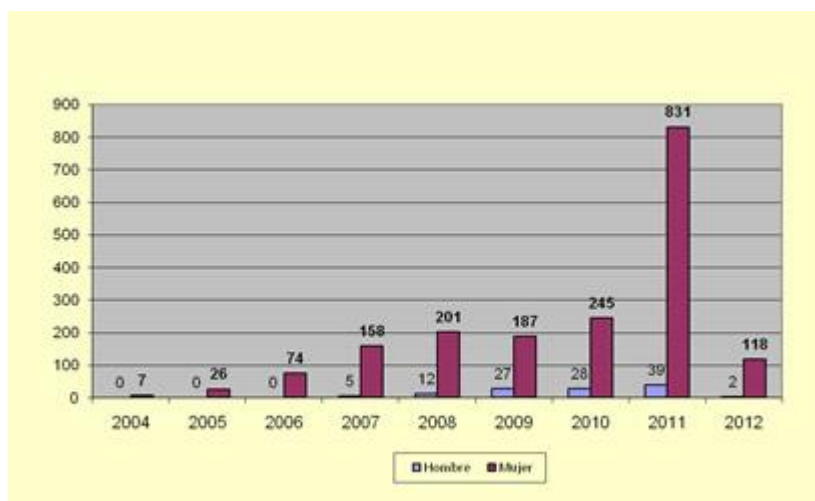
Source: CHS Alternativo based on numbers retrieved from RETA System

¹⁹⁰ See: <http://www.chsalternativo.org/contenido.php?men=L&pad=33&pla=2&sal=2&id=E> (Sited 01.June 2012)

¹⁹¹ Some cases may have more than one type of exploitation: Sexual exploitation, forced labor, child sale, begging, removal of organs or unknown type of exploitation.

Table N.3

Victims according to gender
Total: 1960



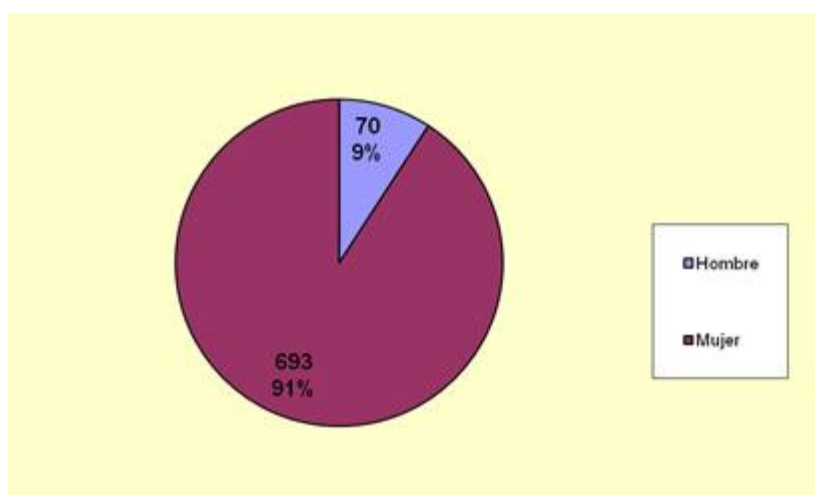
Hombre=male / Mujer=female

Source: CHS Alternativo based on numbers retrieved from RETA System

Table N.4

Children according to gender

Total: 763¹⁹²



Hombre=male / Mujer=female

Source: CHS Alternativo based on numbers retrieved from RETA System

¹⁹² 35.5% of the victims of trafficking in Peru are young women or girls under 18.

Annex 2: Interview Guide NGO informant

Background information of interviewee:

Name:

Position:

Date of the interview:

Location:

Time:

1. In general, how would you assess the performance of the Peruvian state in fulfilling its commitments as a signatory to the Palermo Protocol?
2. Specifically, what is your opinion of the role of various government agencies in implementing these commitments?
 - Peruvian National Police.
 - Public Ministry and Judiciary.
 - Other public bodies mainly responsible for the care and protection of victims of the crime of trafficking.
3. What mechanisms for monitoring the performance of the state currently exist? What has been your involvement in them?
4. From your professional experience, what do you think have been the main reasons or incentives that have motivated the practical implementation of the commitments made by the Peruvian state regarding the Palermo Protocol?
5. What difficulties have you noticed in this implementation process?
6. What are the main challenges for the future to continue this implementation process?

Annex 3: Interview Guide for Police Officers and other Public Officials

Background information of interviewee:

Name:

Position:

Date of the interview:

Location:

Time:

1. What is the knowledge and competence that the personnel in your office have in relation to the commitments made by the Peruvian government as a signatory to the Palermo Protocol?
2. In a more specific level, what role has your organization in implementing these commitments? Have your office worked in partnership with other entities also responsible for the care and protection of victims of the crime of trafficking.
3. What mechanisms for monitoring the performance of your office currently exist? What has been your involvement in them?
4. From your professional experience, what is the use given to the information about human trafficking gathered by the state?
5. What difficulties have you noticed in the performance of your duties?
6. What are the main challenges for the implementation of the Palermo Protocol in the areas for which your office is responsible?